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Current Topics.

A Criminal Law Classic.

A LAW BOOK that has completed its century and has just reached its twenty-seventh edition has surely earned the title of a classic. This distinction has been achieved by Archbold's "Criminal Pleading," which was first published, in a volume of modest size, in 1822 by JOHN FREDERICK ARCHBOLD, one of the most prolific of legal writers. The volume, treating as it did of evidence and pleading, and furnishing precedents of indictments, had an excellent reception, and a new edition was speedily called for and issued. Thereafter ARCHBOLD assigned the copyright to the publishers, and unfortunately a dispute arose between them which resulted in a lawsuit, the full story of which is told in detail in *Archbold* v. *Sweet*, 1 Moody & Robinson 162. According to the report the declaration stated that "the plaintiff was a barrister-at-law, and the author of a book called 'A Summary of the Law relative to Pleading and Evidence in Criminal Cases,' of which two editions had been published; that he afterwards sold the copyright of that work to the defendant; that the defendant published a third edition of the same work as and for, and purporting to be edited by, the plaintiff; that such third edition contained many errors and inaccuracies in law and reasoning, whereby and by reason of the same being published as and for an edition by the plaintiff, he, the plaintiff, was damaged in his reputation, etc." Lord TENTERDEN, C.J., who tried the case with a jury, observed that "the inaccuracies were such, that if attributed to the plaintiff they would be prejudicial to his character, said, that the question for the jury would be, whether the third edition professed to be the work of the plaintiff." Influenced, no doubt, by the language and form of the title page, the jury found a verdict for the plaintiff. The unlucky editor remained anonymous, but his successor, no less a person that JOHN JERVIS, afterwards Sir JOHN JERVIS, Chief Justice of the Common Pleas, put matters right for the fourth edition. JERVIS's name became one to conjure with, and even in the most recent edition it appears on the title page. Later editors have been W. N. WELSBY, of the well-known reporting "firm" of MEESON & WELSBY, WILLIAM BRUCE, stipendiary magistrate for Leeds, W. F. CRAIES, Mr. (now Sir) GUY STEPHENSON, Mr. H. D. ROOME, and now Mr. R. E. ROSS, principal clerk of the Court of Criminal Appeal, by whose competent hands the work has been carefully brought up to date.

"Riotous."

WHAT IS the meaning of this word where it occurs in s. 3 of the Vagrancy Act, 1824, s. 12 of the Licensing Act, 1872, s. 58 of the Metropolitan Police Act, 1839, and s. 29 of the Town Police Clauses Act, 1847? It is perhaps too late to suggest that light might be thrown on this question by considering the nature of riot, though it seems highly probable that the framers of, at any rate, the earlier of these enactments really had in mind assemblages of disorderly characters; the minimum of three persons assembled in one place is not a large number to require; and although other elements of an indictable riot, such as a common purpose, and its execution to the terror of the public, would rarely be present, the use of the word "riotous" does seem to indicate something of the nature of a tumultuous action by more than one person. But "Stone's Justices' Manual" (see the 1926 edition, p. 910, note (*a*)), in saying that "the word 'riotous' means noisy, turbulent or uproarious conduct, disturbing the quiet and good order of a place, and is not used in the same sense as an indictment for riot" would use it, is giving what, for a century, has been the meaning acted upon. Noisy singing, shouting, pushing people about, are sufficient bad behaviour to justify a conviction for being drunk and riotous. Section 12 of the Licensing Act has an alternative word, "disorderly," and, theoretically, this ought to express a variety of ill-conduct different from riotous. In practice, the words are treated as synonymous, and offenders dealt with indifferently as "drunk and riotous" or "drunk and disorderly."

When one is considering the case of the prostitute, the matter has to be looked at more carefully. Is a prostitute liable to be punished for forms of disorderly behaviour quite unconnected with her unlawful occupation, where others go free, or are subjected to a much milder maximum punishment? It is to be doubted. What the section aims at is ill-behaviour as prostitutes, such as quarrelling over a man who is claimed to have been successfully solicited by two women of ill-fame, or the insulting words and gestures which sometimes follow unsuccessful solicitation. *Bonner* v. *Lushington*, 1893, 37 SOL. J. 217, left it as a question of fact for the justices whether a woman solicits in such a way as to be "riotous or indecent," with the result that some benches convict under the Vagrancy Act for solicitation by mere civil words of invitation. The Recorder of Liverpool put the position properly in *R.* v. *Duke*, 1909, 73 J.P. 88.

The alternative expression used of the prostitute is "behaving in an indecent manner." This word "indecent" is also the alternative in the case of drunkenness under the Metropolitan Police Act and the Town Police Clauses Act, and it is suggested it means exactly the same in the Vagrancy Act as in those statutes. There must be some lewd behaviour to justify the charge. An unostentatious invitation to unlawful intercourse can only by a very violent stretch of language be called indecent. Taking a man's arm, however annoying that

action may be, is not indecency. But persistently holding on and refusing to be shaken off, with the risk of a breach of the peace, might not unfairly be stigmatised as riotous within the meaning of any of these enactments.

Aiders and Abettors in Summary Offences.

During the hearing of an information against Imperial Airways Limited (judgment given at Marlborough Street Police Court on the 4th inst.) for erecting a structure beyond the general line of buildings in Charles Street, Haymarket, without the consent of the London County Council, controversy was raised as to whether the defendants were or were not at the time of the offence the owners of the building, and it was contended, on behalf of the Council, that, even if they were not, they could, upon evidence which revealed their participation in the offence, be dealt with as aiders and abettors. Counsel for the defence argued against this, contending that s. 5 of the Summary Jurisdiction Act, 1848, created an offence which ought to be specifically charged, and that the defendants, being summoned as principals, could not be convicted as aiders and abettors. There is, in law, no need that defendants, whose part in the offence is aiding and abetting, should be summoned or convicted as aiders and abettors. They can be dealt with as principals throughout, and upon evidence of aiding and abetting, be convicted and punished as principals: *Du Cros* v. *Lambourne*, 1907, 1 K.B. 40. Section 5 of the Summary Jurisdiction Act, 1848, "did not create an offence, but merely regulated procedure and punishment": *H. Gould & Co., Ltd.* v. *Houghton*, 1921, 1 K.B. 509; 65 Sol. J. 344. These cases emphasise an important rule, which indeed existed before they were decided, but which is often overlooked by the less experienced practitioner.

The Carriage of Goods by Sea Act, 1924, 14 & 15 Geo. 5, c. 22.

The Carriage of Goods by Sea Act, 1924, Art. 4, r. 2, provides, *inter alia*, that "Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from (*q*) Any other cause arising without the actual fault or privity of the carrier, *or* without the fault or neglect of the agents or servants of the carrier, but the burden of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage." In *R. F. Brown & Co.* v. *T. & J. Harrison*, reported in *The Times*, 7th April, 1927, it was held by Mackinnon, J., that the word "and" must be read for the word "or" in r. 2 (*q*) of Art. 4 of the Carriage of Goods by Sea Act, 1924, thus rendering it necessary for the person claiming the benefit of the exception contained in r. 2 (*q*), *supra*, to prove that both he *and* his agents were free from blame. In this connexion there is authority for the proposition that the court may construe the word "or" as "and" if it is necessary to do so to carry out the real intention of the Legislature. Thus, in *The Metropolitan Board of Works* v. *Steed*, 1881, 8 Q.B.D. 445, the question turned upon the meaning of the word "or" in the Metropolis Management Act, 1862, 25 & 26 Vict. c. 102, s. 98, which provides in terms that no existing road, passage or way, shall be hereafter formed or laid out for carriage traffic, unless such road shall be forty feet wide, or for the purpose of foot traffic, unless such road be of the width of twenty feet, *or* unless such streets respectively shall be open at both ends. Grove, J., held that the above enactment meant that the road must be of the width prescribed *and* be also open at both ends. Again, in *Walker* v. *York Corporation*, 1906, 1 K.B. 724, a Divisional Court had to consider the construction of the Highway Act, 1835, 5 & 6 Will. 4, s. 50, s. 89, which provides shortly that if, on an appeal to quarter sessions under s. 88 of the statute by a person who thinks that he will be injured or aggrieved by a proposed diversion of a highway, the jury find that the proposed new highway is more commodious to the public *or* that the party appealing would not be injured or aggrieved, the court shall dismiss the appeal, but that if the jury find that the proposed new highway is not more commodious or that the party appealing would be injured or aggrieved, the court shall allow the appeal. The Divisional Court held that s. 89, *supra*, was contradictory, and that the word "or" in the first part of the section should be construed as "and." Finally, in *Ingram and Royle, Ltd.* v. *Services Maritimes du Tréport, Ltd.*, 1914, 1 K.B. 541, the Court of Appeal had under consideration the terms of the Merchant Shipping Act, 1894, 57 & 58 Vict. c. 60, s. 502, under which the owner of a British ship is not liable to make good any loss or damage happening without his actual fault or privity where any goods, merchandise, or other things taken in or put on board his ship are lost or damaged by reason of fire on board the ship. Kennedy, L.J., expressed the view that the party relying upon the above provisions had not merely to show that the goods, for the loss of which he is being sued, were lost by reason of fire, but also to show affirmatively that the loss happened without his actual fault or privity.

What is a "Dispute"?

An important judgment arising out of the construction of a charterparty was recently delivered by Mr. Justice Mackinnon in *Bede Steam Shipping Co. Limited* v. *Bunge y Born Limitada S.A.* (*Times*, 1st April, 1927).

One of the clauses of a charterparty provided that "all disputes from time to time arising out of this contract, shall, unless the parties agree forthwith on a single arbitrator, be referred to the final arbitrament of two arbitrators . . . Any claim must be made in writing and claimant's arbitrator appointed *within three months of final discharge*, and where this provision is not complied with the claim shall be deemed to be waived and absolutely barred."

Claims arose out of this charterparty. The plaintiffs claimed a sum of £508 as balance of freight due to them on final discharge. The defendants admitted only £416 of this sum, and set up a counter-claim for £581 for short delivery. More than three months after the date of final discharge, the plaintiffs brought an action to recover the sum of £568 which they alleged to be due to them as balance of freight. The defendants admitted that they owed only a sum of £416, but counterclaimed £581 for short delivery, and they further alleged that the plaintiffs' claim had been barred by reason of the above clause in the charterparty. Mr. Justice Mackinnon held, that as the defendants had all along admitted their liability to the plaintiffs to the extent of £416, there had never been any dispute as to this amount, but that inasmuch as the defendants had disputed liability for any sum in excess thereof, and as the plaintiffs likewise had disputed liability to the defendants in respect of the claim for short delivery, there had been "disputes" with regard to both these items, and accordingly both these items were barred by virtue of the above clause in the charterparty, requiring disputes to be referred to arbitration within three months after final discharge. With regard to the argument that the whole claim of the plaintiffs was likewise barred, notwithstanding that the defendants had admitted liability for a part thereof, the defendants having refused to pay it, until their claim for short delivery was met, Mr. Justice Mackinnon observed that "*a mere failure or refusal to pay money which was admittedly due, would not amount to a 'dispute,'*" at any rate for the purposes of the above clause in the charterparty.

This view would appear to be in accordance with the decision of the House of Lords in *L. & N.W. Ry. Co.* v. *Billington*, 1899, A.C. 79, and with the dicta of Rowlatt, J., in *L. & N.W. Ry. Co.* v. *Jones*, 1915, 2 K.B., at p. 40, to the effect that there can be no difference or dispute where there has been an agreement to the demand made, and merely a refusal to pay.

Private Street Works.

By ALEXANDER MACMORRAN, M.A., K.C.

(*Continued from p.* 282).

II.

Before leaving the consideration of the notice which has to be served upon the owners, it has to be pointed out that the notice is not given to each frontager to make up so much of the street as adjoins his premises. The words of the section itself are a little ambiguous. It provides that the notice is to be addressed to the respective owners or occupiers of the premises fronting on such parts thereof as may require to be sewered, levelled, etc. Questions have been raised as to the extent of the liability of frontagers in this respect, but it was pointed out by Wills, J., in *Lancaster* v. *Barnes U.D.C.*, 1898, 1 Q.B., at p. 858, that "The notice is a general one. It is a notice to all the owners collectively to make up the street generally. No one ever saw a notice under s. 150 calling upon each owner to make up that part only which was opposite his own house. There would obviously be a practical difficulty in carrying out such notice. As a matter of practice the work is never done by the owners; they always leave it to the local authority to do it for them and charge them with the expenses." This last statement is a little too wide, because it has repeatedly been recognised that the owners may, by agreement among themselves, execute the necessary works. But subject to this, the notice to each frontager is a notice to carry out the work of making up the street generally. Assuming, then, that the notices have been given and have not been complied with by the owners, the next thing to be done is the ascertainment of the expenses which have to be apportioned among the several frontagers. It is for the local authority to determine, at least in the first instance, what expenses are to be included. It has been the practice in many cases to add to the actual cost of the works a percentage for establishment expenses. There is no express authority on the point unless it is to be found in the judgment of Channell, J., in *Hanwell U.D.C.* v. *Smith*, 68 J.P. 496. The better opinion appears to be that such a percentage cannot properly be charged, and this view receives some confirmation from the fact that under the Private Street Works Act, 1892, power is expressly given to the local authority to charge such a percentage. However this may be, it is for the local authority to ascertain the total amount which has to be apportioned, and as will be seen hereafter the propriety of including any particular charges in the total sum to be apportioned can only be questioned by way of appeal to the Ministry of Health under s. 268. So far as regards s. 150, the local authority cannot make any contribution towards those expenses, but in districts where the local authority have adopted s. 81 of the Public Health Act, 1925, power is given to contribute the whole or a portion of the expenses of the works executed under the Act.

The next step in the proceedings consists in the apportionment by the surveyor. He is required by the section to determine the proportion to be borne by each frontager, that proportion having to be determined strictly according to frontage. There is no power given by the Act of 1875 to make an apportionment upon any other ground, and as will be seen hereafter the expenses cannot be apportioned according to benefit as can be done under the Private Street Works Act, 1892. When a notice of apportionment has been served it may be disputed within three months after the date of such notice, and during that time no proceeding of any kind can be taken to enforce payment of the expenses. In the case of *Hanwell U.D.C.* v. *Smith*, already noticed, Channell, J., sums up the law in this way: "As to the question of what the surveyor or the arbitrator appointed with reference to the apportionment can do when that is disputed, I think that all the cases which have dealt with what he can do say distinctly that all he can do is to divide up in the proper way the figure which is given to him and upon which the notice is given and which the local authority have decided to be the proper amount. But he must deal with that figure, apportioning it in the right way among the parties and, if necessary, measuring the frontages and doing that kind of thing. He can deal with that and that only." On the expiration of the period of three months already mentioned, and not before then, the local authority may demand payment, the notice of apportionment not being for this purpose a sufficient demand, and the time within which the expenses can be recovered will depend upon the date of the demand. Therefore, if the expenses are to be recovered summarily the proceedings to recover must be taken within six months from the date of notice of demand. This is the effect of s. 257 of the Act, which will be noticed presently.

On the subject of the jurisdiction of the justices, there have been many decisions, but the effect of them may be shortly stated as follows: The justices can entertain any question as to the original liability of the persons charged. Thus they may and must decide, if necessary, whether the street is or is not a highway repairable by the inhabitants at large, but if there is any ground of liability and the objection goes only to the extent of that liability and the principle upon which it is to be determined, the justices cannot entertain the objection in proceedings to enforce payment. One case may be cited in support of this proposition: In *Wake* v. *Sheffield Corporation*, 1883, 12 Q.B.D. 142, proceedings were taken against a frontager and he raised the objection that part of the work was executed upon land belonging to private owners. It was held by the Court of Appeal that as part of the work was executed on the street, the local authority had power to fix the sum to be apportioned and the magistrate had jurisdiction to entertain the complaint and could only make an order for payment of the apportioned sum. If the frontager was aggrieved, his only remedy was by way of appeal to the Ministry of Health under s. 268 of the Public Health Act, 1875.

Mention has already been made of s. 268, and it may be convenient now to state the effect of that section. It provides that where any person deems himself aggrieved by the decision of the local authority in any case in which the local authority are empowered to recover in a summary manner any expenses incurred by them or to declare such expenses to be private improvement expenses, he may, within twenty-one days after notice of such decision, address a memorial to the Local Government Board (now the Ministry of Health) stating the grounds of his complaint, and the Minister may make such order in the matter as to him may seem equitable, and the order so made shall be binding and conclusive on all parties. There was, at some time, some doubt as to what was meant by the decision of the local authority within the meaning of the section, but it is now settled that the decision consists in the demand of the expenses and that the twenty-one days have to be calculated as from the date of that decision (see *Reg.* v. *Local Government Board*, 10 Q.B.D. 309. This decision was said to be applied in the more recent case of *Rex* v. *Local Government Board, ex parte Thorp*, 84 L.J., K.B. 1184, though it is not easy to reconcile the two cases in all respects). The jurisdiction of the Minister of Health under s. 268 is very wide. In the case just referred to, Brett, L.J., said: "It seems to me obvious from the construction of the Act that the Board have power to enquire into every circumstance, however remote, which could reasonably determine the question whether it was equitable or not that a particular sum should be paid." The usual course upon a complaint made under the section is that the Minister directs the holding of a public enquiry by an inspector or other person appointed by him. The procedure has been adversely commented upon in many cases. The inspector has to hear the evidence and

report upon it to the Minister. The report is said to be a privileged communication, and the result is that the evidence is heard by one tribunal while a decision is given by another who did not hear the evidence and may have acted without regard to the report of the inspector. In the *Local Government Board* v. *Arlidge*, 1915 A.C. 120, upon a similar provision in the Housing Act, 1909, s. 17, it was held that an order of the Local Government Board dismissing an appeal was not open to objection on the ground that it did not disclose which of the officers of the Board actually decided the appeal and that the appellant was not entitled as of right as a condition precedent to the dismissal of his appeal either to be heard orally before the deciding officer or to see the report made by the Board's inspector upon the public local enquiry. The procedure which has been outlined above cannot therefore be questioned on the ground of want of jurisdiction or of irregularity in the proceedings, but it cannot be said that the procedure is quite satisfactory.

Section 150 of the Public Health Act contains, in the last paragraph of the section, an important provision. It enacts that the same proceedings may be taken and the same powers may be exercised in respect of any street or road of which a part is or may be a public footpath or repairable by the inhabitants at large, as fully as if the whole of such street or road was a highway not repairable by the inhabitants at large. The effect of this provision is that where, as often is the case, a new street is laid out so as to incorporate an old footpath or bridle-way, proceedings may be taken under the section although the old footpath or bridle road was repairable by the inhabitants at large. In other words, the frontagers may be made liable to pay for the making up of the entire new street. An example of the application of this clause will be found in *Evans* v. *Newport, U.S.A.*, 24 Q.B.D. 264. The effect, therefore, of widening an old highway may in some cases have the effect of making the frontagers liable for the making up of the entire road.

In this connection it may be interesting to refer to the case of *Kingston-on-Thames Corporation* v. *Baverstock*, 73 J.P. 378. It appeared in that case that in the year 1868 an order had been made for the diversion of a public footpath which had existed previous to the year 1835, and was a highway repairable by the inhabitants at large. The order for the diversion which was made under the Highway Act, 1835 recited that the old footpath was to be diverted so as to run along a new road lately made. Now the Act of 1835 provides that in the case of a diversion the new highway shall be repairable in the same way as the old. It was held that the justices were justified in coming to the conclusion that the entire new road was a highway repairable by the inhabitants at large, although no doubt the intention of the parties was that the footpath should be diverted so as to run along the footpath of the new road. Had the latter view prevailed the case would no doubt have fallen within the provisions of s. 150 now under consideration, and in order to prevent similar consequences in future it is necessary in the case of a diversion to see that the old footpath is diverted to the line of the footpath of the new road.

The next point to be considered is that which arises under s. 152. That section provides that where any street has been sewered, levelled, paved, flagged, metalled, channelled and made good and provided with proper means of lighting to the satisfaction of the urban authority, such authority may, if they think fit, by notice in writing put up in any part of the street declare the same to be a highway, and thereupon . . . the same shall become a highway repairable by the inhabitants at large, and every such notice shall be entered among the proceedings of the urban authority. It is provided, however, that no such street shall become a highway so repairable if, within one month after such notice has been put up, the proprietor or a majority in number of the proprietors of such street, by notice in writing to the urban authority object thereto, and in ascertaining such majority joint proprietors shall be reckoned as one proprietor. The first point to be noticed in connection with this section is that as it originally stood it applied only when the whole of the works mentioned in the section had been executed to the satisfaction of the urban authority. It was so decided in the *Attorney-General* v. *Bidder*, 47 J.P. 263. But the section was amended to avoid this difficulty by s. 41 of the Public Health Act, 1890 in districts where that Act is adopted, and the jurisdiction of a local authority now extends to cases where all or any of the works mentioned in s. 150 have been executed in a street. In the case last mentioned Sir GEORGE JESSEL made some observations to the effect that wooden paving did not come within the meaning of any of the requirements of the section. But it is now provided by the Public Health Act, 1890, s. 11 (2) that a street or part of a street which has been asphalted or paved with wood, tar paving or artificial stone or other improved paving of any kind shall be deemed to have been paved within the meaning of any provision of the Public Health Acts, provided that a street shall not be deemed to be paved to the satisfaction of an urban authority unless it is paved with such kind as well as with such quality of paving as the local authority shall consider suitable for the street. It will be observed, that it is entirely in the discretion of the local authority whether they will declare a street to be a highway repairable by the inhabitants at large. It is now provided further by the Public Health Act, 1925, s. 82, that where all the works mentioned in the section have been done to the satisfaction of the urban authority then, on the application in writing of the greater part in rateable value of the owners of the houses or land in such street, the urban authority shall, within three months after the time of such application, by notice put up in such street declare the same to be a highway repairable by the inhabitants at large, and thereupon such street shall become a highway repairable by the inhabitants at large. It is to be observed, however, that the section last quoted applies only to streets in respect of which notices have been given under s. 150 of the Public Health Act, 1875, on or after the 8th September, 1925, the date upon which the Act of 1925 came into operation.

There remains to be considered the various means by which the liability of a frontager can be enforced. It has already been mentioned that there is a remedy by way of summary proceedings, that is to say proceedings before justices under the Summary Jurisdiction Acts. It may be convenient, however, to state here that the local authority have power under s. 257 of the Public Health Act, 1875 to order that the expenses shall be payable by instalments, and if that has been done the procedure is the same for the recovery of an instalment as it would otherwise have been for the recovery of the full amount. An action would not lie for the recovery of the expenses, the reason being that where a statute provides a particular method of recovering expenses the remedy given by the statute is exclusive, but to this there is an exception which arises under s. 261 of the Public Health Act, which provides that proceedings for the recovery of demands below £50, which local authorities are empowered to recover in a summary manner, may, at the option of the local authority, be taken in the county court as if such demands were debts within the cognisance of such courts. It has already been noticed that the time within which summary proceedings can be taken is that prescribed by s. 11 of the Summary Jurisdiction Act, 1848, that is to say within six months after the date of the demand. There is no limitation of the time within which a demand may be made, but once made the time begins to run, and it has been held that the six months' limitation for summary proceedings is also applicable to the proceedings taken in the county court under s. 261 above mentioned.

The next remedy which is open to the local authority is to declare the expenses to be private improvement expenses. The result of such a declaration appears from ss. 213 to 215 of the Act of 1875. When such a declaration is made the local authority may recover by means of private improvement rates such amount as will be sufficient to discharge such expenses, together with interest thereon at a rate not exceeding £5 per cent., any such period not exceeding thirty years, as the urban authority may in each case determine. Such rates are made on the occupier of the premises for the time being and the occupier is entitled, under the Act, to make certain prescribed deductions from his rent. Provision is also made for the redemption of private improvement rates before the expiration of the full period.

The last method of enforcing payment of expenses consists in the enforcing of the charge upon the premises created by s. 257 of the Act of 1875. That section provides that the expenses may be recovered together with interest at a rate not exceeding 5 per cent. from the date of service of the demand for the same until payment thereof from any person who is the owner of such premises when the works are completed for which such expenses have been incurred, and until the recovery of such expenses and interest the same shall be a charge on the premises in respect of which they were incurred. The charge thus created takes effect on the completion of the works, and questions have arisen as to the persons liable in cases where there has been a change of ownership between the date of the original notice and the date of the completion of the works. The space at disposal does not permit of more than a reference to these cases. It has been held that the charge is one not on the interest of any particular owner of the premises but on the total ownership, that is to say on the respective interest of every owner for the time being in proportion to the value of his interest. The effect of this is to give to the local authority a remedy against the property itself, so that the charge really takes precedence of any other charge, such as mortgage or the like. The procedure, which can be taken either in the High Court or the county court, by way of action or originating summons, is to claim first of all a declaration of the charge and to pray for an enquiry into the interests of any person in the premises, and for an order, if necessary, for sale of the premises. The period within which such proceedings can be taken is twelve years (see the Real Property Limitation Act, 1874, s. 8), and the time begins to run from the date of the completion of the works—not from the date of the apportionment (see *Hornsey L.B.* v. *Monarch Investment Building Society*, 24 Q.B.D.1).

(*To be continued.*)

The Landlord and Tenant Bill.

By E. P. HEWITT, K.C., LL.D.

II.—(*Continued from p.* 284.)

Part II of the Landlord and Tenant Bill is not confined to trade and business properties, but contains amendments in the general law of landlord and tenant. Clause 13 makes an important alteration in the law concerning the true measure of damages where an action is brought at the end of the term for breach of the repairing covenants contained in a lease.

"13.—(1) Damages for a breach of a covenant or agreement to keep premises in repair during the currency of a lease, or to leave premises in repair at the termination of a lease, whether such covenant or agreement is expressed or implied, and whether general or specific, shall in no case exceed the amount (if any) by which the value of the reversion (whether immediate or not) in the premises is diminished."

Any dispute as to the amount of damages payable for breach of any such covenant or agreement may be referred by either party to the tribunal (sub-s. (2)); and the section applies to leases made before, as well as to those made after the commencement of the Act (sub-s. (3)).

Under the existing law, the damages recoverable for breach of the repairing covenants in a lease differ substantially according as the action is brought during the term or after its expiration. When an action is brought during the term, the measure of damages is not the amount that would be required to put the premises into repair, but the amount by which the marketable value of the reversion is depreciated by the premises being out of repair (*Smith* v. *Peat*, 9 Ex. 161; *Woodfall*, 759). But, where an action is brought after the expiration of a tenancy for breach of the covenant to leave the premises in repair, the measure of damages, under the present law, is such sum as would be sufficient to put the premises into the state of repair required by the covenant (*Joyner* v. *Weekes*, 1891, 2 Q.B. 31; *Henderson* v. *Thorn*, 1893, 2 Q.B. 164; *Anstruther-Gough-Calthorpe* v. *McOscar*, 1924, 1 K.B. 716). It makes no difference for this purpose that the landlord may be going to pull down the premises and erect buildings of a different nature in their stead, so that he suffers no real damage by the premises being left by the tenant in a bad state of repair. Moreover, where a landlord sues during the currency of the term and recovers damages, he is under no duty to spend any part of the money in putting the premises into repair. The landlord is entitled to bring a further action at the end of the term for breach of the covenant to deliver up in repair; and in such action he is entitled to recover the amount required to put the premises into the state of repair they ought to be in, under the covenant, *less* the amount recovered in the prior action (*Henderson* v. *Thorn*, 1893, 2 Q.B. 164).

The effect of s. 13 (1) of the Bill would seem to be to leave the law as it stands at present, so far as regards actions brought during the currency of the term, but to alter the law, so far as regards actions brought at or after the termination of a lease by making the measure of damages in such cases the same as where the action is brought during the term. Such an alteration in the law will be generally approved of as fair and reasonable. The alteration made by sub-s. (2) is not likely to meet with the same general approval. A dispute as to the amount of damages payable for breach of a repairing covenant is one suitable in every way for being tried before the ordinary courts of law; and there appears to be no sufficient reason for authorising either the landlord or the tenant to compel the other of them to go before the proposed new tribunal, instead of the ordinary courts.

It is important to observe that the section is retrospective.

Section 14 (1) provides (in effect) that in leases made after the commencement of the Act containing a covenant, condition or agreement against assigning, underletting, or parting with possession of the premises without licence or consent, such covenant, condition or agreement (unless made in pursuance of a covenant, condition or agreement in a lease made before the Act) is to be deemed, notwithstanding express provision to the contrary, to be subject to the proviso that such licence or consent is not to be unreasonably withheld.

This amendment also will be generally approved of as fair and reasonable. The alteration proposed to be made by sub-s. (2) is more open to question. Section 14 (2) provides, in substance, that in leases, whether made before or after the Act, containing a covenant, condition or agreement against the making of improvements without licence or consent, such covenant, condition or agreement shall be deemed, notwithstanding express provision to the contrary, to be subject to a proviso that such licence or consent is not to be unreasonably withheld. But this is not to preclude the right to require as a condition of such licence or consent the payment of a reasonable sum in respect of any damage to the premises or any neighbouring premises of the landlord.

In considering this provision, it will be borne in mind that under s. 1 of the Bill the landlord is to pay to the tenant on the termination of the tenancy, as compensation for any improvement executed by him or his predecessors in title, the capitalised value of the addition to the letting value of the holding, which is determined by the tribunal to be the direct result of such improvement. If a landlord, in order to protect himself from incurring liability to pay for improvements which he does not desire should be executed—but his objection to which may be over-ruled under s. 3—causes a covenant to be inserted in the lease that no improvement shall be made without his consent, his refusal to give consent may, under s. 14 (2), be ignored if the refusal is held to be unreasonable.

By s. 14 (3), in leases containing a covenant, condition or agreement against alteration of the user of the premises without licence or consent, such covenant or condition is to be subject to a proviso that no fine, by way of increase of rent or otherwise, shall be payable for such licence or consent. But this is not to preclude the landlord requiring payment of a reasonable sum in respect of diminution in value of the premises or any neighbouring premises of the landlord. Any difference as to the reasonableness of such sum is to be referred to the tribunal, " and in the event of such reference, the landlord shall be bound to grant the licence or consent *on such terms as the tribunal considers reasonable*." Under the wording of this clause it would appear that the landlord cannot be bound to give his licence or consent unless there is a reference to the tribunal, and that the matter cannot be referred to the tribunal unless the landlord requires payment of a fine.

Clause 15 of the Bill provides for the apportionment of rent-charges affecting several holdings.

The important clause in Pt. III of the Bill is s. 16, which relates to the constitution of the tribunal and to proceedings to be taken under it. By s. 16 (1) the tribunal is to be " such one of a panel of referees appointed for the purposes of this Act by the Reference Committee . . . as may be selected in manner provided by rules " made by such committee. By sub-s. (2) the reference committee is given power to make rules as to the manner of selection of the referee, and as to the manner in which any application or reference is to be made, and as to the procedure in relation to the same.

By sub-s. (3) the decision of the tribunal on any question of fact is to be final, but any party may appeal to the High Court on any question of law, and the decision of the High Court is to be final and conclusive.

The costs of any proceedings before the tribunal are to be in the tribunal's discretion, " and the tribunal may itself tax the amount of the costs ordered to be paid, or may direct in what manner they are to be taxed " (sub-s. (4)). The provision that the tribunal shall itself have the power to tax the costs of proceedings appears to be of a novel character. Any order of the tribunal may, by the leave of the High Court, be enforced in the same manner as a judgment or order of the court to the same effect (sub-s. (5)). The reference committee for the purposes of the Act is to consist of the Lord Chief Justice, the Master of the Rolls and the President of the Surveyors' Institution (sub-s. (6)).

By s. 16 (7) it is provided that nothing in the Act shall prevent an agreement being made for referring to arbitration under the Arbitration Act, 1889, any matter which under the Act is to be determined by the tribunal.

From the outline of the Bill in this and the last previous number of THE SOLICITORS' JOURNAL, it will be seen that the functions of the tribunal, both under Pt. I and Pt. II of the Act, would be of very great importance. The holdings, for example, to which Pt. I applies, are not, of course, confined to retail shops or the like, but include any premises used for carrying on any trade or business. Part I would, therefore, apply to large stores, and premises where wholesale business is carried on, banks, insurance companies, factories, workshops, etc. The improvements, therefore, in respect of which a cash payment by way of compensation may be claimed from the landlord at the end of the term may, in many cases, be of a nature involving large figures. The question arises whether matters in dispute under the Act could not be determined by the courts, quite as efficiently, and with little or no greater expense than by the proposed tribunal, and whether in any case the determination by the courts would not give greater satisfaction to the parties concerned. At all events it would seem reasonable that the parties, or either of them, should be able to elect to go before the ordinary courts, instead of being compelled to have the matter determined by the tribunal.

A Conveyancer's Diary.

Death Duties in Respect of Undivided Shares.

A question which is exercising the minds of conveyancers at the present moment is raised by the claim of the Inland Revenue that land subject to the statutory trusts, by reason of the existence of undivided shares, is to be regarded as personalty for the purposes of payment of death duties. Acting on this opinion, they have held that when any such land passes on a death, duties must be paid in a gross sum and not by instalments.

We understand that this opinion is based on the former practice that, where before the date of death land had become subject to an immediately effective trust for sale, the land was regarded as having been converted into personalty for the purposes of the Finance Act, 1894, s. 6 (8), even though, in fact, it was still unsold.

On the other hand, if the trust for sale became effective on or after the death, it was treated as realty for the purposes of that section.

We fear that this decision of the Inland Revenue will bear very harshly on small settlements, more especially as it was becoming a very usual custom for testators, before 1926, to devise small estates to trustees for sale upon trust for the husband or wife for life, with remainder to the children of the marriage in equal shares.

We have had reason before to remark on the very narrow construction placed by the Inland Revenue on the Law of Property and kindred Acts, and we must point out once more, that the object of these Acts was to simplify the law and not to provide or accelerate revenue. The Law of Property Act is not a supplementary Finance Act, and the tendency of the Inland Revenue to treat it as such must be strongly resisted.

There are isolated sections which give some support to the Inland Revenue's contention, and it is true that for conveyancing purposes it was necessary to prevent a legal estate in land being held in undivided shares, but throughout the Act we can find much that we think shows that it was never intended to change the incidents of death duties, or to impose new burdens as respects the collection of such duties.

The Law of Property Act, 1925, s. 16, is the key section as respects death duties. It provides expressly that " Nothing in this Act shall alter any duty payable in respect of land or impose any new duty thereon or affect the remedies of the Commissioners . . . against any person other than a purchaser . . ." The remedies include a right in some cases to demand payment in a gross sum, in others to demand payments by instalments; " affect " from its context must mean affect in any way. If it had been intended to mean " affect prejudicially " only the word " prejudicially " would have been used.

Sub-section (5), so far as it is material to this question, provides: " Notwithstanding that any duties are by this section made payable by the personal representative or other person aforesaid, nothing in this Part of this Act shall affect

the liability of the persons beneficially interested or their respective interests in respect of any duty, and they shall accordingly account for," etc. This shows that, although for convenience of collection the personal representatives, or other estate owners, may, in the first instance, pay the duty, the ultimate incidence is not to be affected.

One of the strongest arguments against the Inland Revenue's contention is to be found in s. 17. For, under sub-s. (2), the charge for duties is shifted to the proceeds where land is sold to a purchaser. Sub-section (3) provides, in effect, that where land is sold, and the charge for duties is overreached, the duties will immediately become payable in a gross sum, and will carry interest at 4 per cent., notwithstanding that those duties may have been payable by instalments.

This assumes that where under the old law death duties would have been payable by instalments, it is to remain so payable till the events mentioned in that sub-section occur.

Section 18 (2), which provides for the application of capital money, including proceeds of sale, in discharge of death duties, provides also for repayment out of income by the like instalments and at the like rate of interest at which the unpaid duty and the interest thereon might have been paid.

Then again, section 28, taken with S.L.A., 1925, ss. 75 and 77, show that the proceeds of sale become "capital money," and accordingly may be treated as "land."

We think that the above provisions would have justified the Inland Revenue in taking the view that in the cases mentioned death duties can be paid by instalments.

But as they do not take this view, it is most essential that the point should be put out of all doubt, at the earliest possible moment, by legislative amendment.

The present Finance Bill seems to give a favourable opportunity for the introduction of such an amendment.

Landlord and Tenant Notebook.

Derogation from Grant.

An interesting and important application of the principles relating to derogation from grant is well illustrated by a case recently tried before Branson, J.: *O'Cedar, Limited* v. *Slough Trading Co., Limited*, 1927, W.N. 114.

The doctrine of derogation from grant applies, of course, not only as between grantor and grantee, but also as between lessor and lessee.

The material facts in *O'Cedar, Limited* v. *Slough Trading Co., Limited* (*supra*), were shortly as follows: There a part of a building had been demised to the plaintiffs, who agreed to pay, as additional rent, which was recoverable by distress, an amount equal to that which the lessors might expend in effecting or maintaining the insurance of the demised premises against fire. The lessees further covenanted not to carry on or permit upon the demised premises any noxious or offensive trade or business, or to do or suffer any other thing which might render any increased or extra premium payable for the insurance of the demised premises or other premises adjacent thereto, against fire, or which might make void or voidable any policy for such insurance. The lessees acting as agents for the lessors had effected insurances at premiums averaging 3s. 5d. per cent., subsequently the lessors let the remainder of the premises, part of which had been demised to the lessees, to a woodworker. The result was that the insurance company immediately raised the insurance premiums to £1 1s. per cent. for the remainder of the currency of the policy, and refused to renew it. The lessees, however, eventually were able to effect other insurances at a rate averaging 19s. 2d. per cent.

The lessees thereupon claimed to recover from the lessors the increased premiums which they had been obliged to pay, as a result of the lessors' letting the remaining portion of the premises to a person carrying on a woodworking business.

There were two contentions apparently raised by the lessees, viz.: (1) That the lessors had derogated from their grant, and (2) that they had been guilty of breaches of *implied* covenants not to do anything to render an increased premium payable in respect of the demised premises.

As far as the doctrine of derogation from grant is concerned, in its application to lessor and lessee, this doctrine generally means that the lessor must not do anything which will interfere with the lessee's enjoyment of the demised premises or which will affect the purpose for which the premises have been let.

The acts of the lessors in *O'Cedar, Limited* v. *Slough Trading Co., Limited*, however, do not appear to come within the above doctrine, and Mr. Justice Branson so held. To do anything which would practically prevent premises from being used for the particular purpose for which they have been let is one thing, and would amount to derogation from grant; on the other hand, to do anything which has the effect of increasing the insurance premium which the lessee is under an obligation to pay is quite different. As Branson, J., put it: "If the action of the defendants (the lessors) *had rendered it commercially impossible to insure the premises at all*, different considerations might well have applied, but he had been asked to extend the principle that a lessor must not derogate from his own grant to a case where he had done something on adjoining land which was not in itself unreasonable or unbusinesslike, which had not affected the demised premises physically in any way, which had not rendered it less easy or less difficult to carry on therein the business for which they were demised, but which had had the effect of adding substantially to the expense of carrying on that business. If he acceded to that contention, he would be extending the application of the principle into a region quite different from that in which it had previously been applied."

With regard to the second point, it was contended that inasmuch as there was a covenant on the part of the lessees not to do anything which would have the effect of making an increased premium payable, a similar covenant on the part of the lessors had to be *implied*. But Mr. Justice Branson negatived this contention as well, holding that the existence of such a covenant on the part of the lessees did not impose on the lessors a correlative obligation not to use the remainder of the land or premises in such a way as to render an increased premium payable in respect of that portion of the premises let to the lessees.

Inasmuch as there does not appear to be any direct authorities on either of the above propositions of law, the decision of *O'Cedar, Limited* v. *Slough Trading Co., Limited*, is one that should be carefully noted.

A GRAY'S INN PUBLICATION.

Gray's Inn, the oldest of the Inns of Court, is about to introduce an innovation in the form of a publication dealing with the interests of members and the affairs of the Inn. The project has been in the air for some time, and at a meeting held last week it was adopted, the Treasurer, the Earl of Birkenhead, and the Benchers having given their approval, and a committee has been appointed to settle the details of publication.

In deciding upon the scheme, the Inn is following the example of the Universities and of The Law Society, which have their respective literary and official organs. Gray's Inn has the reputation of being the most democratic of the Inns of Court, and this step is an indication of the progressive spirit of the members. Whether the other Inns will follow its example time will reveal. The view is held by very many members of the Bar that an organ representing all the Inns would be of great utility and well received.

The attention of the Legal Profession is called to the fact that the PHŒNIX ASSURANCE COMPANY Ltd., Phœnix House, King William Street, London, E.C.4 (transacting ALL CLASSES OF INSURANCE BUSINESS) invites proposals for Fidelity Guarantee and Court Bonds, Loans on Reversions and Life Interests. Branch Offices at Byron House, 7, St. James's Street, S.W.1; 187, Fleet Street, E.C.4; 20-22, Lincoln's Inn Fields, W.C.2; and throughout the country.

POINTS IN PRACTICE.

Questions from Registered Annual Subscribers are invited and will be answered by some of the most eminent authorities of the day. All questions should be addressed to—The Assistant Editor, "The Solicitors' Journal," 94-97, Fetter Lane, E.C.4, be typewritten on one side of the paper only, and be in triplicate. Each copy to contain the name and address of the Subscriber. To meet the convenience of Subscribers, in matters requiring urgent attention, answers will be forwarded by post if a stamped addressed envelope is enclosed.

A.E.A., 1925, s. 36 (1)—Whether Appointment of a New Trustee an "Assent."

739. *Q.* X died in February, 1926, seised of a freehold house, and leaving a will made in December, 1925, appointing A, B, and C executors and trustees, and containing a residuary devise to them upon trust for sale. The will was proved by all three executors in April, 1926, and in October they entered into a contract as personal representatives to sell the house to V, completion to take place on 29th September, 1929, or earlier, at V's option. They also granted a lease of the house to V, expiring 29th September, 1929. In November, 1926, B made arrangements to go abroad, and a deed of retirement was executed in which there were recitals of the will, etc., the partial realisation of the personal estate, the sale of the house ("but no conveyance thereof has yet been executed") and the intention that the whole of the estate should be vested in A and C alone. The operative part comprised a declaration by B of his desire to be discharged from the trusts, a consent by A and C to such discharge and to the vesting of the estate in them alone, and a declaration that the estate should be held by them upon the trusts of the will. A memorandum of this deed is endorsed on the probate grant. V has now entered into a contract to sell the house to P, and the following questions have arisen: (1) Can A and C alone (with the concurrence of V) convey to P pursuant to the agreement for sale to which B was a party? (2) If so, in what capacity? (3) Is the deed of retirement equivalent to an "assent" by A, B and C as personal representatives to the devise to themselves (or to A and C alone)as trustees for sale, as well as a discharge of B from his trusteeship? (4) If so, is the memorandum thereof on the probate a sufficient protection to P? (5) If not, would a declaration in the conveyance negativing any assent or conveyance meet the case, and would such a declaration by A and C alone be sufficient? (6) Should an acknowledgment be given in respect of the probate as well as the deed of retirement, and will one by A and C alone be sufficient? (7) Will it be in order to ignore the lease in drafting the conveyance? (8) Generally, can any steps be taken or document executed to simplify the title prior to conveyance?

A. This question involves the issue whether an assent can be made, so to speak, by a side-wind, when the executor purports to do something else. The opinion here given is that if in that other operation he complies strictly with A.E.A., 1925, s. 36, divesting himself of the legal estate in favour of named beneficiaries who are the proper persons under the will to take it, it can, though the question whether a purchaser is obliged to accept such a title may be one on which opinions may differ. Given that B could assent by appointing new trustees, the further question arises whether he has in fact done so. If he has not actually joined in an express vesting declaration in favour of the new trustees by name, the opinion here given is that he has not assented within the A.E.A., 1925, s. 36. It is true a vesting declaration may be implied in favour of new trustees for the purposes of the T.A., 1925, by s. 40 (2) (*b*). but, if reference has to be made to an Act of Parliament to find out who they are, they can hardly be considered as "named" in the document within the A.E.A., 1925, s. 36 (4). In answer to question (1) therefore A and C can only convey if there has been an assent as above. As to (2), they should convey because they are bound to by contract, and their position *vis-à-vis* their beneficiaries would be easier if an estate contract was registered under the L.C.A., 1925, s. 10 (1) class C (iv). The third question is answered as above, and the fourth in the affirmative if the third is. Question (5), no, for all executors proving must convey or assent, see A.E.A. 1925, ss. 2 (2) and 55 (1) (iii). Question (6), the acknowledgment should be given, and the purchaser is entitled to have it from all the executors. Question (7), no, though *primâ facie*, the executors should not have dealt with realty by granting a lease. Question (8), V and P in his place, are entitled to a proper conveyance from all the executors unless assent has been given as above. Section 25 of the T.A., 1925, may be noticed, but reliance on it in the face of s. 2 (2) of the A.E.A., 1925, would be experimental.

Joint Tenancy or Tenancy in Common—Partnership —Sale by sole Survivor.

740. *Q.* Conveyance in 1917 to A and B "in fee simple as part of their partnership property," the conveyance not containing any express power of sale or other usual survivorship clauses. A died December, 1923, appointing executors and trustees by his will. The partnership deed between A and B provided that on death of either partner, the survivor should have option to purchase deceased's share, the purchase money to be secured by a bond for instalments extending over six years. Survivor B exercised option to purchase, gave such bond to executors of A, and has ever since continued in possession of the real estate and the business. No conveyance or other document was executed by A's executors to survivor B. B has now formed the business into a private limited company and wishes to convey the real estate to the limited company. It is suggested that having given his bond for the purchase of A's share, B is now legally and beneficially entitled to the real estate. B in conveying the property to the limited company, wishes to avoid joining the executors of A in the conveyance, as they have accepted the bond in settlement of A's share. Can B convey (*a*) simply as beneficial owner? (*b*) Must he join A's executors? (*c*) Is he a trustee for sale who must appoint a second trustee? If B can sell as being "solely and beneficially interested" within the meaning of L.P. (Amend,) Act, 1926 (amendment of s. 36 (2)), is it absolutely necessary (or merely advisable) in the conveyance from B to the limited company to recite B's beneficial interest fully, *i.e.*, the option in the deed of partnership, the exercise of the option and the bond?

A. Partners as such hold property in equity as tenants in common: see *Lake* v. *Craddock*, 1732, 3 Peere Williams, 157. The opinion is here given therefore that not only did A and B hold as tenants in common in equity, but the habendum recited above gives notice of the trusts of the partnership to a purchaser, thereby excluding the operation of the amendment to the L.P.A., 1925, 1st Sched., Pt II, para. 3, contained in the L.P. (Am.) A. 1926, Sched. The issue as to the operation of the L.P.A., 1925, on 1st January, 1926, will depend on where the legal estate was, and that will depend on how a court of law would have construed the above habendum. If it created a joint tenancy at law, the legal estate was vested in B after A's death, and, the land being held in equity in undivided shares vested in possession, the L.P.A., 1925, 1st Sched., Pt. IV, para. 1 (1) applied, and B holds on trust for sale, having to appoint a co-trustee to give receipts. (Part II, para. 3, did not apply, because of its exclusion by para. 7 (j).) If the above habendum created a tenancy in common at law, Pt. IV, para. 1 (4) has applied, and the

property has become vested in the Public Trustee. The question is not an easy one, see *Re Christie*, 1917, 1 I.R. 17, and *Re Selous*, 1901, 1 Ch. 921. However, if B appoints himself and another trustee by virtue of all powers, etc., they can sell *quacunque via*. B does not appear to have been solely and beneficially interested in the property on 1st January, 1926, for A's executors would have the vendor's lien for unpaid purchase-money, notwithstanding the bond: see *Winter* v. *Lord Anson*, 1827, 3 Russ. 488.

Undivided Shares—Separate Disentailing Deeds—Right to Custody—Acknowledgment for Production.

741. *Q.* Prior to the 1st January, 1926, A, B and C being tenants in common in tail in possession of Blackacre, executed three several disentailing deeds, and thereupon became tenants in common in fee simple. A, B and C employ separate solicitors, each of whom, in fact, at present continues to hold one disentailing deed. By virtue of the L.P.A., 1925, Blackacre is now vested in A, B and C as joint tenants on trust for sale, and in pursuance of the trust a portion of Blackacre was sold recently. The conveyance contained a (statutory) acknowledgment by the vendors of the purchaser's right to production of, *inter alia*, the three disentailing deeds in the ordinary form. No express assent has been given by A, B or C to hold the disentailing deed under his control for himself and his co-trustees. It has been suggested that the acknowledgment is ineffective on the ground that none of the disentailing deeds is in the possession or under the control (within s. 64 of the L.P.A., 1925) of the three trustees giving the acknowledgment It is argued in reply: (1) That the deeds being part of the freehold, passed to the three trustees for sale on the 1st January, 1926, and the solicitors in whose custody they are now hold them for the three trustees jointly, and not for their respective clients. (2) Alternatively, that the deeds in the respective possessions of A, B and C are held by them in trust for themselves and their co-trustees (they having no beneficial interest in the land in their personal capacity) and are constructively in the possession of the three trustees. (3) If neither (1) nor (2) is correct, it is suggested that the signature of the acknowledgment was equivalent to an assent by each of A, B and C to hold his deed for himself and his co-trustees. An opinion is desired as to whether: (1) The acknowledgment above referred to is effective. (2) The solicitor holding any disentailing deed can properly deal with it without instructions from the three trustees for sale.

A. Whatever the rights of the beneficaries *inter se* may be, a court administering equity would certainly not listen to one of three persons who had given a joint acknowledgment on a claim that he was entitled to sole custody and could therefore refuse production. *Vis-à-vis* the purchaser, there could hardly be a stronger case of estoppel. So, each of the three being bound, the consequences set forth in s. 64 (2) follow. The first question is therefore answered in the affirmative. As to the second, the opinion here given is that the three persons who have made the joint acknowledgment have thereby impliedly subjected the deeds to joint responsibility and control—assuming, of course, without giving an opinion on a point not arising, that the Act itself had no such effect.

Settled Land—Vesting Deed.

742. *Q.* In your answer to *Q.* 655, you say that the trustees should execute a vesting deed and then require a conveyance to themselves under s. 7 (5) of the S.L.A. I am somewhat puzzled by this answer. Is the land still "settled land"? Even assuming that it is, is a principal vesting deed necessary before the surviving tenants for life can comply with the trustees' requirement to execute a conveyance under s. 7 (5) of the S.L.A.? In other words, does s. 13 of the Act apply to such a case?

A. It is agreed that on the death of the surviving child the land ceased to be settled land, and that no vesting deed was necessary for the surviving tenants for life can convey the legal estate vested in them without the execution of a vesting deed.

Undivided Shares—Two Sets of Trustees—Vesting of the Land.

743. *Q.* A and B were possessed under the will of their brother (who died in 1868) of a leasehold property as tenants in common in equal shares. A died in 1871 having by her will given her moiety to her niece C absolutely. B died in 1914, having by her will given her moiety to trustees on trust for sale and to pay the income of the proceeds to D for life and afterwards subject to certain annuities to hold the capital and income for C. D is dead, but one of the annuitants is still living and is being paid out of the income. The trustees of the will are both dead. C by her marriage settlement made in 1892 assured the moiety of the property derived from A to trustees to permit her to receive the rents and profits for life then for her husband for life, then for children of the marriage as she should by deed or will appoint. There was a provision that any other property to which the wife might become entitled during coverture should be assured to trustees upon the trusts of the settlement. The marriage took place and there are children. The husband died in 1918 leaving C a widow. The trustees of this settlement are dead, and there is no provision in the settlement for the appointment of new trustees. No dealing with the property is for the moment contemplated, but it is desired to put the matter in order. It seems to us that the personal representatives of the last surviving trustee of the will of B and of the marriage settlement respectively should appoint new trustees of those instruments. The entirety of the land will then be vested in trustees as indicated in L.P.A., 1925, 1st Sched., Pt. IV, 1 (1) (*b*), and no further or other appointments of trustees are at present required. Will you kindly advise if this is so, or if not, what should be done to put the matter in order?

A. On the 31st December, 1925, one moiety of the land was vested in the personal representatives of the last surviving trustee of C's marriage settlement. The other moiety was vested in the personal representatives of the last surviving trustee of B's will. Hence the land was on that date vested in *two sets* of trustees and the opinion is given that by virtue of the L.P.A., 1925, 1st Sched., Pt. IV, para. 1 (4), the land has become vested in the Public Trustee. The best course to pursue to make sure of the right procedure is to have an appointment of new trustees made by the two sets of trustees, C and the annuitant. The appointment should be expressed to be made in exercise of the powers conferred by the L.P.A., 1925 and the T.A., 1925, and of all other powers.

Pre-1926 Intestacy—Realty and Leaseholds—Infant Children and Widow—Order under S.L.A., 1882 to 1890—Appointment of New Trustee.

744. *Q.* A man died in 1909 intestate possessed of freehold and leasehold land, leaving a widow and a son and daughter (both children are still under age). Letters of administration were granted to the widow. Application was made to the court, and by its order the land was deemed to be settled land, and the widow and two men were appointed trustees for the purposes of s. 42 of the Conveyancing Act, 1881, of the S.L.A., 1882 to 1890. One of the male trustees has died and it is desired to appoint another trustee in his place. Under these circumstances it is assumed that the intestacy constituted a settlement (S.L.A., 1925, s. 1, sub-s. (2)) and that the order of the court constituted the vesting order (S.L.A., 1925, s. 117, para. 1, sub-s. (31)). Is it now necessary to apply to the court to direct a person to execute the appointment (S.L.A., 1925, s. 35, sub-s. (2)) and also to have a declaration supplemental to the order of the court executed in accordance with the said s. 35? Is the memorandum of the names and addresses of the new trustees to be endorsed on the order of the court as being the vesting instrument: T.A., 1925, s. 35 (2)?

A. Presumably the application under the S.L.A., 1882 to 1890, was to appoint trustees for the purposes of the Act of 1882, under s. 60 or otherwise, for the realty and the infants' share in the leaseholds were deemed settled land by virtue of s. 59 and s. 2 (10) (i). Under the new legislation the realty remains settled land by virtue of the S.L.A., 1925, s. 1 (2) and (3), and the trustees appointed under the previous Acts are the trustees for the purposes of the present Act, see s. 33 (1). They can appoint a trustee for such purposes in the place of the one who has died under the T.A., s. 64 (1) and s. 36 (1). As to the leaseholds, an undivided share of land, though within s. 2 (10) (i) of the S.L.A., 1882, is not within s. 117 (1) (ix) of the 1925 Act. On 31st December, 1925, the position appears to have been that the executrix held the legal estate upon trust for herself and her two children in undivided shares, see *Re Ponder*, 1921, 2 Ch. 59. This being so, the L.P.A., 1925, 1st Sched., Pt. IV, para. 1 (1), made her a trustee for sale, but she must appoint another trustee or trustees before she can sell. It may probably be convenient that she should appoint the same trustees as of the realty. In neither case does an application to the court appear to be necessary. The realty vested in the administratrix on 31st December, 1925, became vested in the trustees on 1st January, 1926, by virtue of the L.P.A., 1925, 1st Sched., Pt. II, paras. 3 and 6 (*c*) and the S.L.A., 1925, 2nd Sched., para. 3 (1), and they can sell after they have executed a vesting deed in their own favour under the S.L.A., 1925, 2nd Sched., para. 1 (2).

SETTLED LAND—RECENT DEATH OF TENANT FOR LIFE—CONVERSION—PROCEDURE.

745. *Q.* A died in 1875 possessed of a small freehold dwelling-house. By his will he bequeathed "all his estate, both real and personal, unto his wife for the remainder of her life," and after her death he "ordered and directed that all his estate, both real and personal, should be sold and converted into money" by his executors and the proceeds to be divided between his three children named. The widow occupied the dwelling-house until her death in December, 1926. One of the above children died a bachelor and intestate in 1902. Another child, H, died in 1909 intestate leaving a husband, who died in 1923 also intestate, and three children, all of whom are now living. The other child, K, is living. Both the executors of the will are dead and no new appointments have been made. It has been arranged between the interested parties that the surviving child, K, shall buy out the undivided shares in the dwelling-house and take a conveyance to herself.

(1) How can this be effected? There being a trust for conversion, it is submitted that the proceeds of the house, or, as in this case, the agreed value, is divisible as to one-half to and between H's children, and as to the other half to the living child, K.

(2) Who can give a receipt for the purchase money to be paid to the children of H for their undivided share?

A. The legal estate in fee simple in the dwelling-house vested in the widow on 1st January, 1926, by virtue of the L.P.A., 1925, 1st Sched., Pt. II, paras. 3 and 6 (*c*), and the first need will be for a special grant in respect of the settled land under the A.E.A., 1925, s. 22 (1), or the T.A., 1925, s. 162, according as the widow died testate or intestate. Under the S.L.A., 1925, s. 20 (1) (iv), the trustees of the settlement would have been trustees for the purposes of the Act, but at the death of the tenant for life there were none. In the circumstances the probate authorities will no doubt make a grant to suitable persons by arrangement. If all the beneficiaries convey their interests to one, the special executors must then convey or assent to that one under the S.L.A., 1925, s. 7 (5). But in the deduction of title the special representatives should require to see grants of letters of administration in respect of the bachelor son who died in 1902, the daughter, H, and her husband, and also such letters or probate in respect of the free estate of the widow, which presumably included her share of the notionally converted reversion of her predeceasing son in the realty.

SETTLED LAND—VESTING DEED—NEED FOR.

746. *Q.* A testator, appointed A, B and C executors and trustees, with no special reference to S.L. Acts. B and C renounced probate and declined to act as trustees, but did not formally disclaim trusts. A proved will in 1913. Testator devised three properties to different tenants for life with remainders over. One of the properties will fall into residue (part of which consists of property other than land) on the death of the life tenant. It is now desired to execute the necessary vesting assents or deeds and to appoint a new trustee under s. 30 (3) S.L.A., 1925, and/or s. 36 (1) T.A., 1925, in respect of the settled properties and the residue. Your answers to *QQ.* 231, 269, and 660 have been noted, but in view of *Re Dalley*, 1926, W.N. 232, may it not be said that the properties vest in the tenants for life without any vesting deeds? If this is so, and A appoints a new trustee before executing vesting assents, how could the property vest in A and the new trustee, under implied vesting declaration, and how could A and the new trustee vest the properties in the tenants for life by vesting deed? (1) Would not the best course be for A to execute a combined vesting "assent" and deed of appointment of new trustees in respect of each property (see Precedent p. 124, Vol. 18, Encyclopædia of Forms and Precedents, 2nd Edn.), with a separate deed of appointment of new trustee in respect of the residue? (2) If one appointment of a new trustee were executed with reference to all the properties and the residue, and vesting deeds were subsequently executed, would not a purchaser from any tenant for life be entitled to call for the deed of appointment in order to connect the vesting deed with the will?

A. The proposition that the legal estate in fee in settled land vested in the tenant for life by virtue of the L.P.A., 1925, 1st Sched., Pt. II, paras. 3 and 6 (*c*) has been the basis, not only of *Re Dalley*, 70 SOL. J. 839, but of all the answers as to the position of a tenant for life in the present series. But another fundamental point is that he cannot effect a disposition of it under the S.L.A. by reason of the S.L.A., 1925, s. 13, until a vesting deed under the 2nd Sched., para. 1 (2) has been executed by the trustees, save as provided by the L.P. (Am.) A., 1926. Therefore, whether the logic of it is open to criticism or otherwise, a vesting deed is necessary even when the property is vested in the tenant for life. In the above case, presumably the testator's estate was wound up years ago, and a court would find that the requisite assent by the executor had been given to the settled devises. A deed rather than an assent is, therefore, required in favour of the tenants for life. The question whether a combined deed or two deeds as suggested in the answer to *Q.* 660, is the better conveyancing, may be left as a matter of opinion. In any case, purchasers would be entitled to see a deed appointing a trustee who executed a vesting deed in respect of the property they purchased, but separate deeds might be executed in respect of each property if desired.

LANDLORD AND TENANT—HOLDING OVER—NATURE OF TENANCY.

747. *Q.* By agreement dated in 1916 a private house was let for five years from Ladyday, 1916, at an annual rent of £60. The agreement contains the following provision: "Provided also that the tenancy hereby created shall not be determined unless the tenant shall give to the landlords notice in writing of her intention to quit the premises three months prior to the termination of the said term." The tenant did not give the three months' notice referred to in the proviso, but continued and is still in possession of the house, and incidentally does not desire that the tenancy should cease for a few years. We shall be glad to know what the terms of the tenant's holding are considered to be.

(1) Has the tenancy been a yearly tenancy from March, 1921? or

(2) Can the tenancy be continued *ad infinitum* at the tenant's option until she gives three months' notice to determine it?

(3) Can the landlords determine the tenancy and obtain vacant possession at Ladyday, 1928, by serving six months' notice to quit at that date, assuming the Rent Restriction Acts are not continued in force after Christmas next?

A. (1) As to the first question, there can scarcely be any doubt that the tenant by holding over after Ladyday, 1921, continued as tenant from year to year on the terms and conditions of the old lease, so far as applicable; that is, of course, on the assumption that no new agreement was entered into between the parties, whether expressly or impliedly.

(2) The tenancy being a yearly one, it clearly cannot be continued *ad infinitum*. It would appear that the effect of the clause in the original agreement, as to the termination of the tenancy by three months' notice, has been spent, that clause ceasing to have effect on the expiry of the original term on Ladyday, 1921. If the terms of that clause are carefully examined, it will be observed that it is only the tenancy created by the original agreement shows the word "hereby" to which that clause applies.

(3) If the above conclusions are correct, it would follow that the landlords may determine the yearly tenancy by six months' notice to quit, expiring on Ladyday, 1928 (subject, of course, to the Rent Acts).

SETTLED LAND—DEATH OF TENANT FOR LIFE SINCE 1925—BENEFICIARY TENANTS IN COMMON—SALE—PROCEDURE.

748. *Q.* By his will dated 1901 (whereof three executors were appointed, all of whom proved), testator, who died in the following year, devised certain of his freehold property unto his trustees, upon trust, to permit A, his niece, to have the use and enjoyment thereof during her life, and from and after her death, upon trust for all her children, who, being sons, should attain the age of twenty-one years, or being daughters etc., etc., in equal shares. No trust for sale of this property is contained in the will. One of the executors died in 1922 and the remaining two executors appointed B and C to be trustees in 1923, and they themselves retired. A died on the 12th January, 1926, leaving issue four children, all of age. Another child (of full age) died in her lifetime a bachelor and intestate. B and C the present trustees of testator's will are still living. It is now desired to sell the property. Is it correctly assumed that B and C will require to take out representation to A's estate specially limited to the settled land and thereafter assent to the vesting of the property in A's children in fee simple, who having each obtained a vested interest in the proceeds, will (as trustees for themselves upon the statutory trusts), then convey the property and receive the purchase money? If not, what will have to be done in order to carry out the sale? On the death of A the property would appear to have ceased to be settled property and the possibility of a direct conveyance by the children, without necessity of an assent (having regard to the date of testator's death) being required, is suggested.

A. B and C were trustees and not executors of testator's will, and, since the trustees do not appear to come within the S.L.A., 1925, s. 30 (1) (i), to (iv), sub-s. (3) applies, and the surviving executors are trustees under the Act. Whether the beneficiaries could appoint B and C or others new trustees under s. 30 (1) (v), now the land has ceased to be settled land may some day be decided authoritatively, but meanwhile should not be taken for granted. However, the question of who are to be the special representatives of A rests with the probate authorities, under the A.E.A., 1925, s. 22 (1), or the J.A., 1925, according as A died testate or intestate, and pursuant to the Probate rules. When once probate or letters of administration are granted, title as special representatives is established: see *Hewson* v. *Shelley*, 1914, 2 Ch. 13. The grant is absolutely necessary, for until the grant the land is vested in the probate judge on intestacy, see A.E.A., 1925, s. 9, and even if there is a will the special representatives will have no title unless they prove. The simplest procedure in the circumstances would appear to be sale by the special representatives under the L.P.A., 1925, 1st Sch., Pt. IV, para. 2. Or they can convey to A's children under the S.L.A., 1925, s. 7 (5), upon trust for sale: see also s. 36 (2). If one of the surviving children is an elder or only son, the reversion of the son who pre-deceased his mother (if he died before 1926), presumably vested in such surviving son as heir, otherwise in the four daughters as co-parceners In either case, the trustees who receive the purchase money should divide into fifths, and should require a grant of letters of administration to the deceased son to be taken, so that they can obtain a proper discharge in respect of his share.

Correspondence.

Sealed Assent to Devise—Stamp Duty.

Sir,—If you think that the accompanying correspondence is of sufficient importance, please insert.

ROSE, JOHNSON & HICKS.

Pall Mall, S.W.1,
5th April, 1927.

[COPY.]
9 Suffolk Street,
Pall Mall, S.W.1,
24th March, 1927.

Sir,—We are acting for the Westminster Bank Ltd. the sole Executor of a Will containing a specific devise.

We shall feel obliged if you will confirm our view that a sealed Assent to the devise will not be regarded as a deed or alternatively that no stamp is required in view of section 36 (11) of the Administration of Estates Act, 1925.

We are, Sir,
Your obedient Servants,
(Sd.) ROSE, JOHNSON & HICKS.

The Controller of Stamps,
Inland Revenue.

[COPY.]
Inland Revenue,
D.M.1—10975. Somerset House, W.C.2,
25th March, 1927.

Gentlemen,—I have to acknowledge the receipt of your letter of the 24th inst.

In reply, I have to inform you that in the opinion of the Board of Inland Revenue an Assent to Devise if executed under seal is liable to 10/- duty as a deed.

I am, Gentlemen,
Your obedient Servant,
C. E. COOK,
for Controller of Stamps.

Messrs. Rose, Johnson & Hicks.

[COPY.]
9 Suffolk Street,
Pall Mall, S.W.1,
28th March, 1927.

D.M.1—10975.

Sir,—Are we to understand that this particular point has been referred to and decided by the Board of Inland Revenue? If such be the case the result will be that a Corporation will under section 74 (2) of the Law of Property Act, 1925, appoint an Agent to execute Assents which being instruments of title devisees would prefer to have under the Corporation's Seal.

We are, Sir,
Your obedient Servants,
(Sd.) ROSE, JOHNSON & HICKS.

The Controller of Stamps,
Deed Marking Branch, Inland Revenue.

[Copy.]

Inland Revenue,

D.M.1—10975. Somerset House, W.C.2,

30th March, 1927.

Assent to a Devise.

Gentlemen,—I have to acknowledge receipt of your letter of the 28th inst.

In reply I have to inform you that this point has been referred to and decided by the Board of Inland Revenue.

I am, Gentlemen,

Your obedient Servant,

A. W. Stokes,

for Controller of Stamps.

Messrs. Rose, Johnson & Hicks.

Publication of "Points in Practice."

Sir,—Referring to your footnote to letter under this heading from Messrs. Cozens-Hardy & Jewson, it will materially add to the value of the "Points in Practice" if they could be published in one volume.

Bromley, Kent. W. G. Weller.

4th April.

Points in Practice.

Sir,—We should like to support the suggestion approved by other firms in your correspondence columns regarding publication of "Points in Practice" on the new Law of Property Acts, and we hope that if that idea is carried out, the index thereto will be made as full as is possible—an index of this sort cannot really have too many entries.

Sanderson, Tiffen & Henderson.

Berwick-upon-Tweed.

11th April.

Copyholds.

Sir,—In reply to a letter from Mr. Ernest J. Watson in your issue dated the 9th April, 1927, the answer—at least, so it appears to me—is to be found in s. 139 (1) (vi); an order from the Minister must be obtained. This provision follows the lines of the Copyhold Act, 1894, s. 52.

April. A Subscriber.

[We thank our Subscriber for his reply, with which we are in agreement.—Ed., *Sol. J.*]

Court of Appeal.

No. 2.

Rex *v.* **Grain; Wandsworth Guardians,** *ex parte.*

28th February.

Local Government — Guardians — District Auditor — Surcharge — Disallowance — Gratuities — "Emoluments"—Registrar of Births and Deaths—Superannuation—Poor Law Amendment Act, 1844, 7 & 8 Vict., c. 101, s. 32—Public Health Act, 1875, 38 & 39 Vict., c. 55, s. 247—Local Authorities (Expenses) Act, 1887, 50 & 51 Vict., c. 72, s. 3—Poor Law Officers' Superannuation Act, 1896, 59 & 60 Vict., c. 50, ss. 3, 19.

The Local Government Board (now represented in this matter by the Ministry of Health) issued circulars to Boards of Guardians authorising and recommending the payment of certain gratuities to Registrars of Births and Deaths to meet the hardship caused by the diminution of their fees and the increased cost of living. By s. 3 of the Local Authorities (Expenses) Act, 1887, "expenses paid by any local authority whose accounts are subject to audit by a district auditor shall not be disallowed by that auditor if they have been sanctioned by the Local Government Board," Held, that gratuities paid by a Board of Guardians to a Registrar of Births and Deaths in accordance with the terms of the circulars issued by the Local Government Board were part of the emoluments of the Registrar and should be considered in assessing the amount of the superannuation allowance payable to him on his retirement, and therefore the district auditor could not disallow such superannuation allowance nor surcharge the guardians in respect thereof by reason of the fact that the gratuity paid by the guardians had been taken into account as part of the Registrar's emoluments on which the superannuation allowance was based.

Decision of the Divisional Court, 70 Sol. J. 1242, *affirmed.*

Appeal from an order of the Divisional Court making absolute a rule *nisi* for *certiorari* directed to Mr. H. W. W. Grain, the district auditor of the Wandsworth Union, to bring up and quash a certificate of disallowance and surcharge of the sum of £27 17s. 1d. in the accounts of the Wandsworth Guardians for the half-year ended 30th September, 1925. By two circulars dated the 2nd May, 1918, and the 14th of May, 1920, the Local Government Board, who were succeeded at the material time by the Ministry of Health, invited and recommended boards of guardians to pay certain gratuities to registrars of births and deaths where, owing to the increased cost of living, and in some cases a decrease in the amount received in fees, they had experienced great hardship. Although there was no statutory authority for the payment of these gratuities, the district auditor could not disallow them because of the provisions of s. 3 of the Local Authorities (Expenses) Act, 1887, which enacts: "Expenses paid by any local authority whose accounts are subject to audit by a district auditor shall not be disallowed by that auditor if they have been sanctioned by the Local Government Board." In accordance with the circulars the Wandsworth Board of Guardians granted to the registrar of births and deaths, Mr. Minter, a gratuity. This was paid for two years, less a deduction of 3 per cent. as a contribution to the superannuation fund. In February, 1922, Mr. Minter retired on a superannuation allowance, the amount of which was based on fees plus the gratuity which had been paid to him by the guardians. The superannuation allowance, based on fees plus gratuities, was assumed to be correct until September, 1925, when the amount was challenged, and the inclusion of the gratuities in the basis for computing the amount of the superannuation allowance was disclosed. The district auditor, Mr. Grain, disallowed the difference between the amount due on the basis of fees alone, and the amount of the allowance based on fees plus gratuities, and surcharged that sum on certain guardians. The sum in question was £27 17s. 1d., and was part of Mr. Minter's half-yearly superannuation allowance of £137 10s. 1d. The district auditor contended that gratuities were not "emoluments" of the registrar within the meaning of s. 3 of the Poor Law Officers' Superannuation Act, 1896, and that, although he could not disallow them, they were not legalised by the authority of the Ministry of Health. Section 3 of the Poor Law Officers' Superannuation Act, 1896, enacts that the superannuation allowance to an officer or servant shall be based on the average amount of salary or wages and emoluments during the five years preceding retirement. The expression "emoluments" is defined, by s. 19 of that Act, to include all fees, poundages, and other payments made to any officer or servant as such for his own use. A rule *nisi* was obtained on the grounds that (1) the district auditor had no jurisdiction to disallow and make the surcharge; (2) that the gratuities were "emoluments" within the meaning of the Poor Law Officers' Superannuation Act, 1896; (3) that the payments were legalised by the sanction of the Ministry of Health; (4) that the payments were allowed at several previous audits. Counsel showing cause submitted that the power to surcharge resulted because the payments were illegal. Counsel, in support, contended that the word "emoluments" was wide enough to cover any payment made to the registrar for his own use, and that there was no statute

preventing boards of guardians from paying a reasonable remuneration to registrars of births and deaths over and above the statutory fee. The Divisional Court held that the gratuities in question were part of the "emoluments" of the registrar and must be included in the basis on which his superannuation allowance was to be assessed, and that, therefore, the district auditor was wrong in surcharging the payment in question. The rule was made absolute. The district auditor appealed.

The Court (BANKES and SCRUTTON, L.JJ., and ROMER, J.) dismissed the appeal. The effect of the circulars issued by the Local Government Board was that as between the guardians, the Ministry of Health and the district auditor, the payments of the gratuities were authorised and recognised. They therefore constituted "emoluments" of the registrar, and when the registrar retired, the district auditor was not entitled to surcharge any part of the superannuation allowance because it was based in part on the gratuities in question. The gratuities were, in fact, "emoluments," and must be included in the basis on which the superannuation allowance was to be calculated. Appeal dismissed.

COUNSEL: *R. M. Montgomery*, K.C., and *Croom-Johnson*; *Wingate-Saul*, K.C., and *J. Leonard Crouch*.

SOLICITORS: *Sharpe, Pritchard & Co.*; *W. W. Young, Sons & Ward*.

[Reported by T. W. MORGAN, Esq., Barrister-at-Law.]

High Court—Chancery Division.

In re Errington: Gibbs *v.* Lassam.

Romer, J. 20th January.

WILL—CONSTRUCTION—BEQUEST OF INCOME OF ONE-THIRD OF RESIDUE TO E.E., AND AFTER HER DEATH SUCH ONE THIRD PART TO BE DIVISIBLE BETWEEN J.G. AND S.L., OR "IF DEAD, BETWEEN THEIR ISSUE, SHARE AND SHARE ALIKE"—DEATH OF J.G. IN LIFETIME OF E.E.—ISSUE OF J.G. TAKE THE MOIETY OF THE ONE THIRD PART IN EQUAL SHARES *per capita*.

The rule that, where a testator gives the income of his estate to two people, A and B, for their lives, and follows that by a direction that at their deaths the property is to go to their children, the gift is not a gift to take effect on the deaths of both in favour of the children of both, but a gift to take effect on the death of each in favour of the children of each, is a rule which applies to substituted as well as to original gifts.

In re Hutchinson's Trusts, 1882, 21 Ch. D. 811, *applied*.

Originating summons. This was a summons taken out by the trustees of the testator's will asking whether, upon the true construction of the will and in the events which had happened, certain interests were vested or contingent. The facts were as follows: On 5th April, 1883, the testator made his will whereby he devised and bequeathed all the residue of his estate to the use of his daughter E.E. and his son-in-law S.G., upon trust for sale and conversion, and out of the proceeds thereof to pay his funeral and testamentary expenses and debts and the legacies bequeathed by his will, and to invest the residue as therein mentioned, and upon trust to pay the annual income thereof to his wife during her life, and from and after her death, as to one third part thereof, upon trust to pay the same to his daughter E.E. for her separate use. By a codicil dated 5th July, 1888, the testator, after reciting that by his will his daughter E.E. was entitled to one-third part of his residuary estate, declared his will and intention to be that she should be entitled only to the income to be derived from such one third part for her own use and benefit, and that from and after her decease such one third part should be divisible between his daughters J.G. and the defendant S.L., or "if dead, between their issue, share and share alike." On 13th July, 1888, the testator died and his wife died on 26th May, 1898. J.G. died on 30th March, 1925, and E.E. died on 30th July, 1926, a spinster. J.G. had nine children, three of whom died before her, one a bachelor and intestate, and two leaving issue. One of her grandchildren died in her lifetime an infant, and two were born after her death, but in the lifetime of E.E. S.L. had three children and several grandchildren. The questions asked on the summons were: First, did the defendant S.L. and J.G., on the death of the testator, each acquire a vested and indefeasible interest in remainder expectant upon the life interest of E.E. in one moiety of the one third part of the testator's residuary estate. Secondly, did the whole of such one third part, on the death of E.E., pass to the defendant S.L. Or, thirdly, did such one third part, on the death of E.E., pass, as to one moiety thereof, to the defendant S.L., and as to the other moiety thereof to the issue of J.G. or to the defendant S.L. and her issue and the issue of J.G. And lastly, if the issue of the defendant S.L. and J.G. or either of them are entitled to participate, then at what time the class of issue is ascertainable, and whether such issue is confined to children or included grandchildren and later descendants, and whether distribution was *per capita* or *per stirpes*.

ROMER, J., after stating the facts, said: *Prima facie* and grammatically, the words "if dead" mean if both be dead, because there is a direction to divide between two people, or, if dead, between their issue. There is however a rule of construction which is so binding that Kay, J., in the case of *In re Hutchinson's Trusts*, *supra*, felt compelled to give effect to it, although but for the authorities laying down that rule he would have decided differently. The rule is this: Where a testator gives the income of the estate to two people, A and B, for their lives and follows that by a direction that at the death, or at their deaths, or at or after the death or deaths of A and B, the property is to go to their children or their issue, the court does not construe the gift as a gift only to take effect on the deaths of both in favour of the issue of both, but construes it as a gift to take effect on the death of each, of the shares to the income of which the deceased was entitled, to the children or issue of the deceased. That means that in such a case, on the death of A leaving issue, such issue would take one-half, notwithstanding the fact that B is still living. It is true that all the cases in which that general rule of construction has been applied are cases of original gifts. There is no reason, however, why the rule should not equally apply to cases of substituted gifts. In such a case as this the court ought to construe the gift as a gift to A and B, with a substituted gift in each case of A's share in favour of his issue and B's share in favour of his issue. The issue of J.G. would therefore take the moiety of the one third part, such issue being all her issue, including grandchildren and later descendants who were living at her death or were born after her death in the lifetime of E.E. and they would take in equal shares *per capita*.

COUNSEL: *H. A. Hind*; *H. C. Bischoff*; *F. D. Morton*; *L. B. Tillard*; *J. V. Nesbitt*; *Dighton Pollock*; *G. D. Johnston*; *W. S. Norwood*; *Cleveland-Stevens*; *A. B. Nutter*.

SOLICITORS: *John E. Gibbs & Co.*

[Reported by L. M. MAY, Esq., Barrister-at-Law.]

Provace Ltd. *v.* Le Brasseur Surgical Manufacturing Co. Ltd.

Russell, J. 10th and 11th February.

TRADE MARK—CERTIFICATION—TRADE MARKS ACT, 1905, 5 Edw. 7, c. 15, ss. 3 and 62—REGISTRATION—TRADE MARKS ACT, 1919, 9 & 10 Geo. 5, c. 79, 2nd Sched.

Section 3 of the Trade Marks Act, 1905, 5 Edw. 7, c. 15, does not confer a right to a certification trade mark separate and independent to the right conferred by s. 62.

Witness action. This was an action by the plaintiffs for an injunction to restrain the defendants from infringing their registered trade mark. The plaintiffs claimed that the trade mark showed that the goods were theirs by virtue of

certification. The facts were as follows: On 7th February, 1924, the plaintiffs entered into an agreement with Lamberts (Dalston), Limited, both firms carrying on business at the same address and having the same directors and shareholders, by which the plaintiffs agreed to allow the Lamberts Company to conduct all business connected with the trade mark "Provace" on payment of a royalty for each article which was sold bearing the trade mark "Provace," and the plaintiffs undertook to certify each article. They claimed that under s. 3 of the Trade Marks Act, 1905, they were entitled to be registered as the owners of the trade mark; on the other hand the defendants submitted that the reference to certification in s. 3 was only introduced by way of reference to the certification trade mark, which s. 62 provided for, and which was new to trade mark law with that Act, and that the plaintiffs had not complied with the conditions imposed by that section and should not have any injunction.

Russell, J., after stating the facts said: "Section 62 introduces a new right which can only be acquired by following the procedure indicated in the section. The plaintiff has not done so. Does s. 3 confer the right to a certification trade mark, or is the word certification merely introduced to meet the case provided for by s. 62? I take the latter view. If s. 3 confers a right separate and independent from the right conferred by s. 62, that section would have been quite unnecessary. The action will be dismissed with costs."

Counsel: *Muntz*, K.C., and *K. E. Shelley; Courtney R. Terrell.*

Solicitors: *Strellett, Mercer & Co.; C. W. Letts* for *Philip Baker & Co.*, Birmingham.

[Reported by L. M. May, Esq., Barrister-at-Law.]

Borne *v.* **Wicker.** Tomlin, J. 22nd February.

Partnership—Death of Partner—Goodwill—Sale of Deceased Partner's Interest in accordance with Articles—Executor of Deceased Partner soliciting old Customers—Injunction.

The rule in Trego *v.* Hunt, 1896, *A.C.* 7, *is not limited to cases where a person alleged to be wrongfully soliciting is an actual vendor voluntarily entering into a contract of sale and putting the proceeds of sale into his own pocket, but it also applies where a personal representative is selling in fulfilment of the contract of his testator, and in such a case an injunction will be granted restraining such personal representative from soliciting the customers of his testator's late firm.*

Walker *v.* Mottram, 1881, 19 Ch. D. 355, a case of a sale by a trustee in bankruptcy, and Green and Sons (Northampton), Ltd. *v.* Morris, 1914, 1 Ch. 562, a case of a sale by a trustee of a deed of assignment, *not applicable to the present case.*

Motion. This was a motion by a surviving partner to restrain the executor of a deceased partner from canvassing or soliciting the customers of the old firm. The facts were as follows: Borne and Wicker carried on business as brewers under a deed of partnership dated the 17th May, 1921. Wicker died in 1926 and two out of his four executors proved his will, namely, J. Wicker and J. B. Wicker. The partnership deed provided (*inter alia*) that on the death of a partner a valuation should be made of the whole of the capital property and assets of the partnership and that the executors of the deceased partner should be entitled to a sum equal to a moiety of the valuation, to be paid within a year by the surviving partner, with interest, and that the surviving partner, within four calendar months of the death of the deceased partner, could elect to have the assets, including the goodwill of the partnership, realised and the net profits applied in payment out of each partner's share, any surplus to be divided between the surviving partner and the estate of the deceased partner equally. J. B. Wicker had been employed by the firm from 1905 till after the death of the deceased partner and thereafter dismissed. There was nothing in his contract of service as to soliciting customers, and after his dismissal he entered into the service of a rival brewery and started to solicit the customers of the partnership.

Tomlin, J., after stating the facts, said: The question is whether the plaintiff is entitled to an injunction restraining the defendant James Bruce Wicker from soliciting customers of the firm on the ground that he is an executor of the deceased partner and had under the partnership deed either to sell the deceased partner's interest in the partnership property and assets to the surviving partner or to join with the surviving partners in selling them to a third party. It has been contended on behalf of the defendant that the well-known rule in *Trego* v. *Hunt, supra*, that the vendors of the goodwill or business are not entitled to solicit customers of the old firm, only applies where the person alleged to be wrongfully soliciting is a vendor voluntarily entering into the contract of sale and putting the proceeds of sale in his own pocket, and that it does not apply to a case where a personal representative is merely fulfilling the contract of his testator. The cases to which I have been referred carry the matter very little further than *Trego* v. *Hunt, supra.* In *Walker* v. *Mottram, supra*, the sale was made by the trustee in bankruptcy, and it was held that the bankrupt could not be restrained from soliciting. In *Green and Sons (Northampton), Ltd.* v. *Morris, supra*, the sale was made by the trustee of a deed of assignment for the benefit of creditors, and it was held that the debtor could not be restrained. I will base myself on the proposition enunciated by Lord Macnaghten in *Trego* v. *Hunt, supra*: "It is not right to profess and to purport to sell that which you do not mean the purchaser to have; it is not an honest thing to pocket the price and then to recapture the subject of sale, to decoy it away or call it back before the purchaser has had time to attach it to himself and make it his very own." It seems to me that if an executor, completing his testator's contract, proceeds to solicit customers, he will be doing the very thing indicated in that passage. There is no justification for first completing the contract and then snatching the subject matter. An injunction must therefore be granted.

Counsel: *Gavin Simonds*, K.C., and *F. Whinney; Grant*, K.C., and *F. Baden Fuller.*

Solicitors: *Gresham, Davies & Dallas; Withers & Co.*

[Reported by L. M. May, Esq., Barrister-at-Law.]

In re **Trollope's Will Trusts. Public Trustee** *v.* **Trollope.** Tomlin, J. 24th February.

Will—Trust for Conversion—Power to Postpone—Retention of Unauthorised Investments under Power to Postpone—Tenant for Life—Remainderman—Rule in *Howe* v. *Lord Dartmouth*—Administration of Estates Act, 1925 (15 Geo. 5, c. 23), ss. 33 and 39—Law of Property Act, 1925 (15 Geo. 5, c. 20), s. 28, sub-s. (2).

Section 39 of the Administration of Estates Act, 1925, *has no application to a case where, after an assent by executors, the residue of the personal estate is held by trustees upon trust for sale, with power to postpone sale.*

The provisions contained in sub-s. (1) (*ii*) *thereof, conferring on personal representatives all the duties conferred by law upon trustees holding land upon an effectual trust for sale, does not suffice to make the Law of Property Act,* 1925, *s.* 28, *sub-s.* (2), *applicable, and accordingly the rule in* Howe *v.* Lord Dartmouth, *is not in all cases abolished by the new law.*

In re Brooker, 1926, 70 Sol. J. 526, *considered.*

Originating summons. This was a summons asking whether by virtue of the Law of Property Act, 1925, s. 28, sub-s. (2), and the Administration of Estates Act, 1925, s. 39, sub-s. (1) (ii), the tenant for life was entitled in the circumstances to receive the whole of the income of certain retained unauthorised investments or only entitled pending the conversion thereof to interest on the capital value at the rate of 4 per cent. per

annum. The facts were as follows:—The testatrix, by her will dated 24th June, 1924, devised and bequeathed all her residuary, real and personal estate to her trustees upon trust for sale and conversion and to invest the residue of the money produced by such sale and conversion, after payment of personal and testamentary expenses and debts and legacies as therein mentioned, and she directed her trustees to stand possessed of the net residue and the investments respecting the same in trust to pay the income to her sister Blanche, during her life, and after her death, to hold both the capital and the income upon the trusts therein mentioned. There was a power in the will to postpone sale and conversion. The trustees desired to postpone the sale of certain unauthorised investments, and the question arose as to whether the rule in *Howe* v. *Lord Dartmouth*, 1802, 7 Ves. 137, applied to the income therefrom.

TOMLIN, J., after stating the facts, said:—The question is whether the tenant for life is entitled to the income of unauthorised investments until they are sold, or whether the income should be applied in accordance with the rule in *Howe* v. *Lord Dartmouth*, *supra*, it being suggested that the rule has, by reason of recent legislation, been abolished. The Law of Property Act, 1925, s. 28, sub-s. (2), contains a provision relating to land held by trustees upon trust for sale, and it has been decided, in *In re Brooker*, 1926, 70 SOL. J., 526, that the effect of the sub-section in regard to property which is the subject matter of the section, including leaseholds, is to make the rule in *Howe* v. *Lord Dartmouth*, *supra*, no longer applicable. It is suggested that the effect of the Administration of Estates Act, 1925, s. 39, sub-s. (1) (ii), is referentially to make the Law of Property Act, 1925, s. 28, sub-s. (2), applicable to pure personalty. The first question that arises is, on whom does s. 39 confer powers? On "the personal representatives," and this expression is defined in s. 55, sub-s. (1) (xi), and does not include trustees in the ordinary sense. It is said, however, that "personal representatives" must have a wider meaning in s. 39, because it contemplates their dealing with the deceased's property "during a minority or the subsistence of any life interest or until the period of distribution arrives." The explanation of these words is, however, to be found in the fact that under the new Acts, the law of intestacy is changed, and that on an intestacy there may be someone interested for life only, while, by the Administration of Estates Act, 1925, s. 33, the personal representatives of an intestate are, for certain purposes, substantially placed in the position of trustees with powers that include, in cases where no immediate distribution is possible, as power to distribute the income as if the rule in *Howe* v. *Lord Dartmouth*, *supra*, did not exist. Section 39, therefore, has no application to a case where, after an assent by executors, the residue of the personal estate is held by trustees upon trust for sale with power to postpone sale. Moreover, even during the period before the personal representatives had assented the rule in *Howe* v. *Lord Dartmouth*, *supra*, remained applicable to pure personalty. In my judgment the provision in s. 39, sub-s. (1) (ii), conferring on personal representatives "all the . . . duties conferred or imposed by law on trustees holding land upon an effectual trust for sale" does not suffice to make the Law of Property Act, 1925, s. 28, sub-s. (2), applicable. It follows that the rule in *Howe* v. *Lord Dartmouth*, *supra*, remains applicable in the present case.

COUNSEL: *Sir A. Underhill; H. S. G. Buckmaster; C. V. Rawlence; Harcourt Harding.*

SOLICITORS: *Charles Rogers, Son & Abbott; Beckingsales and Naylors.*

[Reported by L. M. MAY, Esq., Barrister-at-Law.]

A UNIVERSAL APPEAL.

TO LAWYERS: FOR A POSTCARD OR A GUINEA FOR A MODEL FORM OF BEQUEST TO THE HOSPITAL FOR EPILEPSY AND PARALYSIS, MAIDA VALE, W.

Probate, Divorce and Admiralty Division.

Gulbenkian *v.* **Gulbenkian.** Hill, J. 14th February.

DIVORCE—HUSBAND'S PETITION FOR VARIATION OF SETTLEMENTS — LIFE POLICIES REGARDED AS POST-NUPTIAL SETTLEMENTS — WIFE'S INTERESTS EXTINGUISHED — SUPREME COURT OF JUDICATURE (CONSOLIDATION) ACT, 1925 (15 & 16 GEO. 5, c. 49), s. 192.

Policies of life assurance taken out by a husband giving the wife interests contingent upon the husband's prior death are to be regarded as post-nuptial settlements, and can be varied under s. 192 *of the Supreme Court of Judicature (Consolidation) Act*, 1925.

Divorce Motion.

The petitioner after his marriage had taken out two policies of assurance upon his life, the terms of which were as follows: (1) With the New York Life Insurance Company for £2,000, payable on the 14th May, 1940, to him, if then living, or upon proof of his prior death to his wife; (2) with the Equitable Life Insurance Society of the United States for £500, payable to him on the 14th June, 1936, if then living, or upon proof of his prior death to his wife, if then living, or if not, to his personal representatives. On the 14th June, 1926, he obtained a decree absolute for dissolution of his marriage, and on the 23rd June he filed a petition for variation of settlements. There were two children of the marriage, custody of whom had been granted to the petitioner. The respondent entered no appearance to this petition, and the insurance companies having been notified of the motion intimated that they did not intend to appear. The Registrar in his report submitted that the policies should be varied as post-nuptial settlements by extinguishing the interests of the wife. Counsel for the petitioner, moving to confirm the Registrar's report, submitted that the court had power to vary the policies under s. 192 of the Supreme Court of Judicature (Consolidation) Act, 1925, and referred to *Stedall* v. *Stedall*, 86 L.T. Rep. 124.

HILL, J. Either the wife has no rights at all under these policies or she has an equitable interest as a prospective *cestui que trust*. If she has no rights under the policies, no harm can be done by striking her name out of them. If on the other hand she has rights, it can only be because by the documents in question the husband has settled £2,000 and £500 upon her upon certain contingencies. The other parties to the contracts of insurance do not oppose their variation. I therefore confirm the report.

COUNSEL: *T. Bucknill.*

SOLICITORS: *McKenna and Co.*

[Reported by J. F. COMPTON MILLER, Esq., Barrister-at-Law.]

Societies.

The Law Society.

THE SOCIETY'S LAW SCHOOL.

The lectures and classes for the summer term will commence on 21st April. The subjects to be dealt with during the term will be, for Intermediate students: (i) General Course (Mr. Wade); (ii) Law of Property in Land (I) (Mr. Danckwerts); (iii) Obligations (Contract and Tort) (Mr. Landon); and (iv) Trust Accounts (Mr. Dicksee). The subjects for Final students will be: (i) Law of Property (Mr. Wade); (ii) Common Law (Dr. Burgin); and (iii) Employment, including Agency (Mr. Chorley). There will be courses on Equity (Mr. Danckwerts), and Criminal Law (Mr. Gahan) for Honours candidates, and on (i) Jurisprudence (Mr. Wade); (ii) Roman Law (II) (Mr. Landon); and (iii) Criminal Law and Procedure (Mr. Glyn), for Degree students.

Students can obtain copies of the detailed time-table, and of the regulations governing the three studentships of £40 a year each offered by the Council for award in July next, on application to the Principal's Secretary. Entry forms for the studentships may be obtained after 12th April. Three

similar studentships are also offered by the Council for award in July, 1928. The Principal (Mr. Wade) will be in his room at the Law Society's Hall on the following days, for the purpose of advising students on their courses of study for the term :—

Thursday, 21st April, 10.30 a.m. to 12.30 p.m., and 2 p.m. to 5 p.m.—Intermediate and Final students (new entrants only), and all Degree and Order students.

Friday, 22nd April, 10.30 a.m. to 12.30 p.m., and 2 p.m. to 4 p.m.—Intermediate and Final students.

RUGBY FOOTBALL CLUB.

A dance (in aid of the club) will be held, by permission of the Council of The Law Society, in the Members' Common Room, on Friday, 6th May, from 8.30 p.m. to 1.30 a.m. Jack Payne's Hotel Cecil Band will be in attendance. Tickets, price 10s. single, 17s. 6d. double (including refreshments) may be obtained from the Principal's Secretary, Law Society's Hall, or from the Hon. Secretaries: A. Prothero, 8, St. George's-road, St. Margaret's-on-Thames; A. C. D. Ensor, 82, Gordon-road, Ealing, W.

United Law Society.

A meeting of the society was held in the Middle Temple Common Room on the 4th inst., M. F. W. Yates in the chair. Mr. G. Bull opened: "That this House disapproves of the provisions for securing the Quota of British Films as set out in the Cinematograph Films Bill, 1927." Mr. H. S. Wood Smith opposed. There also spoke Messrs. F. B. Guedalla, R. C. H. Horne, E. H. Pearce and J. MacMillan. The opener having replied, the motion was put to the house, but was lost by two votes.

International Law Association.

The "Revue de Droit International de Sciences Diplomatiques et Politiques" (The International Law Review) has been constituted the official organ of this Association.

The United Law Clerks' Society.

ANNIVERSARY FESTIVAL.

The anniversary festival of this society was held at the Holborn Restaurant on Tuesday, Mr. Justice Romer taking the chair. Among the guests were Sir Herbert Cunliffe, K.C., Sir James Greig, C.B., K.C., Sir Patrick Hastings, K.C., Mr. H. B. Vaisey, K.C., Mr. Alexander Grant, K.C., Mr. T. Artemus Jones, K.C., Mr. W. Spens, K.C., Mr. C. T. Le Quesne, K.C., Mr. Owen Thompson, K.C., Sir T. Willes Chitty, Bt., K.C., Master Chandler, Master Jelf, Mr. Registrar Stiebel, Mr. J. J. Withers, C.B.E., M.P., Sir William Bull, Bt., Sir Roger B. Gregory, J.P., Viscount Erleigh, Mr. A. C. Stanley Stone and Mr. F. M. Guedalla, Mr. Albert Baker, Mr. E. W. Lavington, Mr. G. D. Hugh Jones, Mr. E. A. Manisty, Mr. C. G. Syrett and Mr. H. C. Naldrett.

Mr. Justice Romer proposed the toast of "The United Law Clerks' Society." He said that in 1891 his father had taken the chair at the festival of that year. The society was then young, namely, fifty-five years of age, but even at that time it was very prosperous and already showed signs of the greatness to which it had since attained. There were then 955 members, and the contributed income for the year was £2,236 and the invested funds £946,063. The Society had now reached the age of 91, but he was glad to think that it showed no signs of senility or of decay. It was more prosperous, active and vigorous than ever. It had increased its membership to 1,347, its contribution income had risen to £3,737; the invested funds were £152,298. This was all the more remarkable when it was realised that it was due to the thrift and self-denial of men who as clerks were none too well endowed with the good things of this world. It was a record of which the Society might well be proud. But the result was also due, though in a less degree, to the help that had always been given to the Society by the members of the legal profession, but for which it could not continue its pensions at the present rate. The donation income for the past year, which included the donations received at the festival, was £994. That was good, but he wanted to see it better, and he thought it might be better, for he did not suppose that there was any member of the legal profession who in his heart of hearts was not conscious of the great debt of gratitude that he owed to his clerks. Of the relation between solicitors and their clerks he was not qualified to speak, but he should like to say that when he was at the Bar he received great kindness and much encouragement from soliictors' clerks, at a time more especially when kindness and encouragement meant a great deal to him, and for that he would ever be deeply grateful to them. Of barristers' clerks he could speak with more knowledge. A barrister's clerk must possess a great number of somewhat rare qualities. He must in the first place be the owner of an angelic temper. In the next place he must possess the power of understanding and deciphering almost illegible handwriting; and the clerks of both branches of the profession possessed other qualities which contributed very greatly to any success the barrister or solicitor might achieve. He did think it would be difficult to exaggerate the extent of what they all owed to their clerks, whether they were solicitors, or barristers, or even judges. The profession had given generously to the society in the past, and it would, he hoped, give even more generously in the future to the funds of a society which relieved their clerks in sickness and in old age, and which provided for their dependents when they died in the service of their principals. The society did not appeal to their charitable impulses, it appealed to their deep sense of gratitude. (Applause.)

Mr. H. E. Stapley (treasurer) in responding, said that Mr. Justice Romer had expressed his satisfaction at the fact that the society after an existence of fifty-five years showed no signs of a diminishing popularity. It was only necessary to look at the assembly that night, and at the list of its supporters, after the passage of another thirty-six years of existence to the age of ninety-one, to feel assured that its star was still in the ascendant, and that it showed no sign of waning. So long as it continued to carry on its work and to provide an opportunity for law clerks to make some provision against contingencies, so long as it continued to extend a helping hand to those who had fallen upon bad times, and so long as it continued to receive in support of its work the sympathy and help of the legal profession, there need be no doubt about its future and popularity. The members were all very proud of the long list of chairmen at the dinners of the society, and they felt that it was a great honour to have Mr. Justice Romer occupying that position in succession to his father thirty-six years ago. (Applause.)

Sir Herbert Cunliffe, K.C., proposed the toast of "The Chairman," Mr. Justice Romer returning thanks, and the final toast was "Our Guests," proposed by Sir Patrick Hastings, K.C., and acknowledged by Miss Robina Stevens.

Mr. Albert Harrington (Chairman of Stewards) amidst loud applause subsequently announced donations to the amount of £525.

Law Students' Journal.

Wakefield and District Law Students' Society.

At an ordinary meeting of the above society, held on the 23rd ult., with Mr. A. C. Allibone, the Town Clerk of Wakefield, in the chair, the following subject was debated: "That in the opinion of this society a socialist government in England is desirable." Mr. J. R. Nicholson opened for the affirmative, and Mr. J. H. Lawton replied. There were present, in addition to the leaders, ten ordinary members and two honorary members, all of whom spoke. After the leaders had replied, the chairman summed up, and on an equality of voting gave his casting vote against the motion.

The annual general meeting of the above society was held on the 1st inst., with Mr. H. C. Dickinson, LL.B., the President of the society in the chair. The secretary introduced the annual report, and pointed out that there was a loss of 4s. 7½d. on the session's working. The following officers were elected for 1927-28: President, Mr. A. C. Allibone (Town Clerk of Wakefield and President of the Wakefield Incorporated Law Society); Honorary Secretary and Treasurer, Mr. H. Hall; Committee, Miss E. M. Barker and Messrs. J. L. J. Burton and J. R. Nicholson; Auditors, Messrs. J. A. Collins and J. H. Lawton. All the patrons were re-elected. The meeting closed with votes of thanks to the last session's president, hon. secretary, auditors and committee.

Law Students' Debating Society.

At a meeting of the society held at The Law Society's Hall, on Tuesday, the 5th inst., (Chairman, Mr. H. M. Pratt), the subject for debate was: "That in the opinion of this House the case of *The Carlgarth: the Otarama*, 1927, P. 93, was wrongly decided." Mr. J. S. Freedman opened in the affirmative, Miss G. Petersen seconded in the affirmative. Mr. A. S. Diamond opened in the negative, and Mr. Uma Prasada seconded in the negative. The following members also spoke: Messrs. K. C. Cham, W. M. Pleadwell, L. Ardagh, C. Phillips, J. F. Chadwick. The opener having replied, and the Chairman having summed up, the motion was lost by twelve votes. There were twenty-one members and one visitor present.

The Solicitors' Law Stationery Society, Ltd.: Annual Report.

The Thirty-eighth Annual General Meeting of the Society was held at 104-107, Fetter Lane, London, on Tuesday, 5th April, Mr. Robert Chancellor Nesbitt in the chair.

After Mr. F. J. Holroyde, the Secretary, had read the notice convening the meeting, and the Auditors' Report and the Directors' Report had been taken as read—

THE CHAIRMAN, in moving the adoption of the report and the approval of the accounts, said: I will take the opportunity of referring to certain matters which occurred in a somewhat eventful year, and will deal with the Directors' Report first.

You will see the sales have increased from £264,621 in 1925, to £308,175 last year, an increase of £43,554, a very satisfactory increase. The profit is £47,283, against a profit of £44,941 in 1925, an increase of £2,341. We recommend a dividend of 9 per cent. per annum, less income tax, to be paid in respect of the year which we are now considering, as against a dividend of 18 per cent. in respect of the year 1925. As, however, during last year the subscribed capital of the Company was doubled by using a portion of the reserve, the return on capital, through paying a 9 per cent. dividend, is equal to that in respect of the year 1925. The dividend and bonuses to customers and staff will absorb the sum of £30,768, and out of the balance, the directors propose to write £5,000 off the amount standing in the balance sheet in respect of the Fetter Lane freehold premises, which were purchased in 1920, when the value of property was very high. Then we propose to put £10,000 to reserve account, and to carry forward the sum of £9,779, against £8,264 carried forward at the end of the previous year.

With regard to the purchase of the business of The Central Stationery and Printing Company, Limited, at Liverpool, in April last, as a matter of historical interest, you may like to know that when our Society was founded in 1888, the Liverpool company, founded in 1876, which had been formed on somewhat similar lines to our own, was a prosperous concern. In our first prospectus, attention was called to this as an inducement to solicitors to take up our shares. The business was substantially run upon the same lines as the Society, and it seemed appropriate, therefore, when we were approached by the directors of the company, that we should acquire the business and conduct it as a branch of the Society. We therefore acquired the freehold premises and all the other assets of the company, and have since greatly improved the sales department and also the printing works, so that now the premises are up to date in every respect.

We are very sorry to have to record the death of Mr. James F. Guy, who acted for some time as secretary of this Society, and who had been in our service for thirty-five years. His was a very familiar face at provincial meetings of The Law Society. The vacancy has been filled by the appointment of Mr. Holroyde, who has been with us for some time.

I will now turn to the accounts, and direct your attention to some of the items. You will notice, on looking at the liability side of the account, a considerable alteration in the capital, with which you are already acquainted, and which you authorised. The authorised capital has been increased from £70,000 to £120,000, and the paid-up capital from £56,676 to £116,902. This has been brought about partly by the issue of a certain number of shares to Liverpool solicitors in connexion with the taking over of the Liverpool business, and by giving one fully paid share to each shareholder in respect of each one previously held, and paying up the uncalled balance on the half-paid shares by using a portion of the reserve. The other item on the liability side is the initial sum paid under the Supplemental Trust Deed of £1,887, which was necessary to bring the Liverpool staff into the pension scheme, and after deducting the amount capitalised, and the amount of £1,887, the reserve stands at the considerable figure of £13,320, to which we recommend in the Directors' Report that a further £10,000 be added out of the profits of last year.

Turning to the assets side of the balance sheet there is no comment to make on the first item. You will notice the investment in Government securities is considerably reduced, the figure being £6,681 at the end of last year, as compared with £23,384 at the end of the year 1925. This reduction is chiefly due to the purchase of the Liverpool freehold premises, plant, stock, book debts and other assets which have gone to swell these respective items appearing below in the account.

Turning to the profit and loss account, the increase in the amount for working expenses at departments is also due largely to the expenses of the Liverpool branch. The new item is the contribution to the Staff Pension Fund, amounting to £4,077 and represents an amount equal to that paid into the fund by the staff. We unfortunately made a loss on the sale of our Local Loans Stock amounting to £1,005. With regard to the expenses on capitalisation amounting to £665, £500 of that is in respect of Stamp Duty on the increased authorised capital.

I have now dealt with all the items that I think require explanation. I might say that the publishing department has been very busy during the year. As you know, its activities included the publication in three volumes of "Prideaux's Precedents in Conveyancing" by Sir Benjamin Cherry, the book being printed at our works.

I am also pleased to mention that the circulation of "The Solicitors' Journal" has considerably increased, and I think I may say without exaggeration that we look upon it now as the leading legal periodical.

The adverse circumstances of the year were, of course, the general strike, followed by the protracted coal strike. The latter, there can be no doubt, did great injury to the trade of the country, prevented new enterprises being started, and put up the price of commodities, including, so far as we are concerned, the price of paper. With regard to the general strike, the redeeming feature was that our staff remained absolutely loyal, and we were able to carry on and execute all the orders that reached us during that trying period. We were also able to help the Government very materially in the production of the "British Gazette." Two-thirds of the matter which appeared in that historic but short-lived Journal was set up in our works.

I think, gentlemen, therefore, that I may congratulate you that in a very difficult period of twelve months we have been able to increase both our sales and our profits, and I should like to congratulate the managers and the staff upon this very satisfactory result.

I now beg to move the adoption of the report and the approval of the accounts, and will ask Mr. Turner kindly to second it.

Mr. E. F. TURNER: I beg to second the resolution which has been proposed by the chairman.

The CHAIRMAN: I shall be happy to endeavour to answer any questions that anyone may wish to put. If there are none, I will put the motion: "That the report and accounts be approved and adopted." This was carried unanimously.

On the motion of the CHAIRMAN, seconded by Mr. TURNER, it was unanimously resolved to declare a dividend at the rate of 9 per cent. per annum, less income tax, and to distribute bonuses among the customers and staff in accordance with the articles.

The Directors retiring by rotation, Mr. E. F. Turner and Mr. G. L. Whately, were re-elected.

The Auditors, Messrs. Fuller, Wise, Fisher & Co., were re-elected.

The meeting concluded with a vote of thanks to the Chairman and Directors.

High Court of Justice.

EASTER VACATION, 1927.

NOTICE.

There will be no sitting in Court during the Easter Vacation.

During the Easter Vacation all applications "which may require to be immediately or promptly heard," are to be made to the Honourable Mr. Justice Fraser.

The Honourable Mr. Justice Fraser will act as Vacation Judge from Thursday, 14th April, to Monday, 25th April, both days inclusive. His Lordship will sit in King's Bench Judges' Chambers on Thursday, 21st April, at 10.30 a.m. On other days within the above period applications in urgent matters may be made to his Lordship by post or, if necessary, personally.

When applications are made by post the brief of counsel should be sent to the Judge, by post or rail prepaid, accompanied by office copies of the affidavits in support of the application, and also by a minute, on a separate sheet of paper, signed by counsel, of the order he may consider the applicant entitled to, and also an envelope, sufficiently stamped, capable of receiving the papers, addressed as follows: "Chancery Official Letter: To the Registrar in Vacation, Chancery Registrars' Chambers, Royal Courts of Justice, London, W.C.2."

On applications for injunctions, in addition to the above, a copy of the writ and a certificate of writ issued, must also be sent.

The papers sent to the Judge will be returned to the Registrar.

The address of the Vacation Judge can be obtained on application at the Chancery Registrars' Chambers, Room 136, Royal Courts of Justice.

Chancery Registrars' Chambers,
Royal Courts of Justice.
April, 1927.

Legal Notes and News.

Appointments.

Mr. F. A. WOOD, C.C. (senior partner in the firm of Messrs. Wood & Sons, Solicitors), of 1, St. Andrew's Hill, E.C.4, has been appointed Chairman of the West End Board of Directors of the British Law Insurance Co., Ltd., in succession to the late Mr. A. M. Cope.

Professional Partnerships Dissolved.

ARTHUR WILLIAM LEMON and GEORGE STANLEY BRIGHTEN, solicitors, 1, Crutched Friars, E.C.3 (Brighten and Lemon), by mutual consent as from 30th March. A. W. Lemon will continue to practise at 1, Crutched Friars under his own name.

Wills and Bequests.

Mr. Arthur John Bird (73), of Fellows-road, Hampstead, N.W., formerly Assistant Controller, Estate Duty Office, Somerset House, left estate of the gross value of £2,260.

Mr. James Garson, of Albyn-place and Chester-street, Edinburgh, Writer to the Signet, who died on 21st January, left personal property of the value of £104,907.

POLICE AND BAIL.

At the Lambeth Police Court recently, Mr. F. Mead, in accepting bail for an accused man now under remand, said it had come to his knowledge that the sister of the defendant had tendered sureties at Scotland Yard, apparently at the request of the police. In future, said the magistrate, people who wished to offer bail should not be encouraged to go to Scotland Yard, or any other police station. They must come to the police court, and if the police had any objection to offer the magistrate would consider it. The police had no right to interview proposed sureties at Scotland Yard and offer objections to the persons tendered, which might have the effect of those persons withdrawing. The question of bail was entirely one for the magistrate to decide.

MAKING CRIMINALS PAY.

A fact not generally known, that a person who commits a crime can be both prosecuted in a criminal court and proceeded against in a civil court to make good the damage done, was pointed out in a lecture on the "Civil Liabilities arising from Crime," delivered in Gray's Inn Hall, on Friday, the 25th March, by Mr. A. S. Comyns Carr, K.C., under the auspices of the Solicitors' Managing Clerks' Association. Mr. Justice Wright presided.

Mr. Comyns Carr said it was curious how very seldom criminals were made defendants in civil proceedings to recover damages for the wrongs they had inflicted. One of the principal reasons was that it was not very often that criminals had property sufficient to pay damages. The dependants of the murdered persons rarely brought an action against the murderer; the practical difficulty in the way being to catch the murderer unhanged and get judgment before the law had exercised its remedy.

There were also many cases in which actions could be brought against third parties for damage arising out of crime. Even with murder there were cases in which the relatives of a man murdered by a fellow-workman might recover damages from his employer under the Workmen's Compensation Act, as it might be held to be an accident from the point of view of the murdered man.

We hope to publish a full report of this important lecture in an early issue of THE SOLICITORS' JOURNAL.

ANCIENT COURT REVIVED.

At the Worcester Court of Pleas, an ancient jurisdiction revived, with the Recorder as Judge and the Town Clerk as Registrar, Edward Thompson, fishmonger, was recently ordered to pay £125 damages to Joan May Farmer, a child, as personal damages for suffering caused by being knocked down by the defendant's motor car eight months ago. The defendant was ordered also to pay £50 for treatment in hospital and costs.

VALUATIONS FOR INSURANCE.—It is very essential that all Policy Holders should have a detailed valuation of their effects. Property is generally very inadequately insured, and in case of loss insurers suffer accordingly. **DEBENHAM STORR & SONS (LIMITED)**, 26, King Street, Covent Garden, W.C.2, the well-known chattel valuers and auctioneers (established over 100 years), have a staff of expert valuers, and will be glad to advise those desiring valuations for any purpose. Jewels, plate, furs, furniture, works of art, bric-à-brac a speciality.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate 5%. Next London Stock Exchange Settlement, Thursday, 28th April, 1927.

	Middle Price 11th Apr.	Interest Yield.	Yield with Redemption.
English Government Securities.		£ s. d.	£ s. d.
Consols 4% 1957 or after	85 5/16	4 13 6	—
Consols 2½%	54⅛	4 12 0	—
War Loan 5% 1929-47	102	4 18 0	4 19 6
War Loan 4½% 1925-45	95⅞	4 14 0	4 17 6
War Loan 4% (Tax free) 1929-42	100	4 0 0	4 0 0
War Loan 3½% 1st March 1928	99¼	3 11 0	4 17 0
Funding 4% Loan 1960-90	86⅛	4 13 0	4 14 0
Victory 4% Bonds (available for Estate Duty at par) Average life 35 years	91½	4 7 6	4 10 6
Conversion 4½% Loan 1940-44	95¾	4 14 0	4 19 0
Conversion 3½% Loan 1961	75	4 13 0	—
Local Loans 3% Stock 1921 or after	63½	4 15 6	—
Bank Stock	247½	4 17 0	—
India 4½% 1950-55	91¼	4 19 0	5 2 6
India 3½%	68¼	5 2 6	—
India 3%	59¼	5 1 0	—
Sudan 4½% 1939-73	94	4 16 0	4 19 0
Sudan 4% 1974	84½	4 14 6	4 18 0
Transvaal Government 5% Guaranteed 1923-53 (Estimated life 19 years)	80¼	3 14 0	4 12 0
Colonial Securities.			
Canada 3% 1938	84¼	3 11 6	4 18 0
Cape of Good Hope 4% 1916-36	91½	4 7 6	5 2 0
Cape of Good Hope 3½% 1929-49	79¾	4 8 0	5 1 0
Commonwealth of Australia 5% 1945-75	100¼	5 0 0	5 0 0
Gold Coast 4½% 1956	95	4 15 6	4 17 6
Jamaica 4½% 1941-71	90	5 0 0	5 1 0
Natal 4% 1937	92	4 7 0	5 0 0
New South Wales 4½% 1935-45	87⅓	5 3 0	5 11 6
New South Wales 5% 1945-65	96⅝	5 3 0	5 6 0
New Zealand 4½% 1945	95	4 15 0	4 18 6
New Zealand 5% 1946	102	4 18 0	4 18 6
Queensland 5% 1940-60	96½	5 3 6	5 4 6
South Africa 5% 1945-75	102	4 18 0	4 19 6
S. Australia 5% 1945-75	98½	5 1 6	5 2 6
Tasmania 5% 1945-75	100½	4 19 6	5 1 0
Victoria 5% 1945-75	100	5 0 0	5 2 0
W. Australia 5% 1945-75	98	5 2 0	5 3 0
Corporation Stocks.			
Birmingham 3% on or after 1947 or at option of Corpn.	62¾	4 16 0	—
Birmingham 5% 1946-56	101½	4 19 0	5 0 0
Cardiff 5% 1945-65	100¾	4 19 0	4 19 0
Croydon 3% 1940-60	68¾	4 7 6	5 0 0
Hull 3½% 1925-55	78¼	4 10 0	5 0 0
Liverpool 3½% on or after 1942 at option of Corpn.	72¾	4 17 0	—
Ldn. Cty. 2½% Con. Stk. after 1920 at option of Corpn.	51⅞	4 16 0	—
Ldn. Cty. 3% Con. Stk. after 1920 at option of Corpn.	62½	4 16 0	—
Manchester 3% on or after 1941	62¾	4 15 6	—
Metropolitan Water Board 3% 'A' 1963-2003	62¾	4 15 6	4 16 0
Metropolitan Water Board 3% 'B' 1934-2003	64	4 13 6	4 15 0
Middlesex C. C. 3½% 1927-47	81½	4 6 0	4 18 0
Newcastle 3½% irredeemable	71½	4 18 6	—
Nottingham 3% irredeemable	61	4 18 6	—
Stockton 5% 1946-66	100½	4 19 6	4 19 6
Wolverhampton 5% 1946-56	100¼	5 0 0	5 0 0
English Railway Prior Charges.			
Gt. Western Rly. 4% Debenture	80½	4 19 6	—
Gt. Western Rly. 5% Rent Charge	98½	5 1 6	—
Gt. Western Rly. 5% Preference	92½	5 8 0	—
L. North Eastern Rly. 4% Debenture	75	5 7 0	—
L. North Eastern Rly. 4% Guaranteed	71	5 13 0	—
L. North Eastern Rly. 4% 1st Preference	65	6 3 0	—
L. Mid. & Scot. Rly. 4% Debenture	79	5 1 0	—
L. Mid. & Scot. Rly. 4% Guaranteed	75½	5 6 0	—
L. Mid. & Scot. Rly. 4% Preference	71½	5 12 0	—
Southern Railway 4% Debenture	79¼	5 1 0	—
Southern Railway 5% Guaranteed	97	5 3 0	—
Southern Railway 5% Preference	91	5 10 0	—

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On FRIDAY, MARCH 18th .. THE RT. HON. VISCOUNT SUMNER, G.C.B., P.C.

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